

**DEPARTMENTS OF LABOR, HEALTH AND  
HUMAN SERVICES, AND EDUCATION, AND  
RELATED AGENCIES APPROPRIATIONS FOR  
FISCAL YEAR 2009**

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**WEDNESDAY, MAY 7, 2008**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 9:48 a.m., in room SD-124, Dirksen  
Senate Office Building, Hon. Tom Harkin (chairman) presiding.  
Present: Senators Harkin, Murray, Cochran, and Specter.

**DEPARTMENT OF LABOR**

**OFFICE OF THE SECRETARY**

**STATEMENT OF HON. ELAINE L. CHAO, SECRETARY**

**OPENING STATEMENT OF SENATOR TOM HARKIN**

Senator HARKIN. Good morning. The Appropriations Subcommittee on Labor, Health and Human Services, and Education will now come to order for the hearing on funding for the Department of Labor (DOL).

Madam Secretary, earlier this year you gave a speech in which you said: "The Department's fiscal year 2009 budget is nearly 15 percent less than 10 years ago. That is proof-positive that the Government can do more with less."

Last year, President Bush vetoed the 2008 Labor appropriations bill stating that the bill "spends too much," and that "health care education, job training, and other goals can be achieved without this excessive spending if the Congress sets priorities." He also said, there were "too many earmarks" in our bill.

I hope you do not mind if I respectfully disagree. Your Department, I think, is doing much less since President Bush took office. Much less. Under this administration, the Labor Department's ability to protect America's workers and support a prepared and competitive workforce has declined significantly. Two examples I want to point out.

Last November, the Department of Labor Inspector General (IG) found that the Mine Safety and Health Administration (MSHA) had missed 15 percent of its mandated inspections nationally and in some areas as many as 30 to 50 percent. The IG also said that inspection quality was low, which jeopardized the safety of miners. You know what MSHA said in response? It said MSHA lacked the

resources to hire new personnel to replace retiring inspectors and keep up with increases in mining activity.

Again, with all due respect, Madam Secretary, that is not what I call doing more with less. It is called doing less with less.

Let us look at another worker protection agency, the Occupational Safety and Health Administration (OSHA), where the enforcement staff is down 9 percent since 2001. Last year, the Chemical Safety and Hazard Investigation Board released a report on the BP Texas City refinery explosion in 2005 that resulted in the deaths of 15 workers and more than 100 injuries. The board found that the Occupational Safety and Health Administration had not conducted one planned comprehensive inspection in the oil refining industry. Not one during the entire Bush presidency.

As a result, OSHA committed to completing inspections at all refineries under its jurisdiction by the end of fiscal year 2008. Now OSHA says it cannot finish them until the end of 2009. So, again, is that doing more with less? I do not think so.

It is not just worker protection programs where I believe the President's budget is underfunded. For the 7th year in a row, the President calls for disinvesting in our workforce and drastically cutting programs aimed at improving our global competitiveness. His budget would cut \$474 million, or 16 percent, for State grants for employment and training programs. These are the programs that will help workers develop the skills they need to find employment. Yet, the President sent this budget to us in February when the economy was shedding jobs and millions were out of work. So, Madam Secretary, ask the manufacturing worker in Ohio who has just lost his job, has two kids to support, is this doing more with less?

Now, there is one area where the Bush administration wants to do more and is putting more funding into it, and that is going after labor unions. His budget proposes a 30 percent increase for the Office of Labor-Management Standards (OLMS) to support onerous new financial disclosure requirements for rank and file members, as well as other reporting requirements. Now, this is one office that has not been asked to do more with less.

Meanwhile, much of the money that the Department has spent on President Bush's initiative to "give workers the skills they need to realize their dreams"—that is quoting the President—was awarded without any competition. From 2001 to 2006, the Department provided more than \$250 million in grants on a noncompetitive basis under the High Growth Job Training Initiative. This amounted to 90 percent of the funds available under this initiative going out without any competition, otherwise known as an earmark.

Now, regrettably, we have learned that there were significant problems with how these grants were awarded. We also know that the grantees were not monitored or evaluated effectively to determine whether the funds were well spent. We know this because of the Inspector General audit that I requested last year. Just this morning, the GAO, the Government Accountability Office, released a report that found many of the same problems identified by the IG.

So, Madam Secretary, budgets are about priorities, and I believe this budget does not reflect the right priorities for American workers. Again, it proposes the greatest increase of all for new reporting requirements for rank and file union members, while slashing funding for job training and the fight against child labor. So as we move forward through the budget process, I am going to do everything I can to fight for investments that keep our work sites safe and workers' skills sharp.

With that, I will recognize my ranking member, Senator Specter, for an opening statement.

#### OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Thank you, Mr. Chairman. At the outset, I thank you for our long cooperative relationship. When the power in the Senate has changed, as you and I say, the gavel shifts seamlessly.

I join you in welcoming the Secretary of Labor, who has the distinction of having served the entire tenure of President Bush's two terms, the longest serving cabinet officer and the only cabinet officer to be through two terms. So we note that, Madam Secretary, and the very hard and devoted work you have undertaken in a very, very difficult circumstance.

The reduction in the overall budget for your Department I think is unfortunate, but I understand what is happening here with the limited discretionary funding. It would be my hope that one day in the not too far distant future, there would be a re-evaluation of priorities.

I talk in the far distant future of becoming chairman of the committee, and I am second only to Senator Cochran who is term-limited. Every 6 years or so, the parties change. I may get to be chairman ahead of Senator Harkin.

Senator HARKIN. You know that would be okay with me.

Senator SPECTER. Do I have your vote?

Senator HARKIN. If you were chairman—well, anyway, I will not get into that.

Senator SPECTER. I mention that not at all in jest because of what I consider to be the need for the re-evaluation of priorities to give you more funding.

I was disappointed, for example, that your budget proposes major decreases in community service employment for older Americans in Job Corps and eliminates adult employment in youth training programs. Well, that is unfortunate, but I understand you have a limited budget which has been decreased in absolute dollars, and when you take the cost-of-living adjustments, even more.

I do want to note a couple of issues specifically, and one is the tremendous incidence of juvenile crime hitting my hometown of Philadelphia especially hard—400 homicides a year. Earlier this week, a police officer brutally killed in a robbery. I note the \$50 million which has been put in mentoring, and commend you for the prompt disbursement of those funds. I would urge you to do more.

The initiative that I put in for \$25 million for mentoring, \$5 million to each of five major cities in America, one of which is Philadelphia, should be helpful.

In the balance of your administration, I would urge you to take a very, very close look at what is happening in the Utah mine tragedy. Worker safety is vital. Senator Harkin has highlighted it on what OSHA needs to be doing far in advance of the end of fiscal year 2009. I associate myself with those remarks.

I would also commend to you special activities to try to have confirmations of the National Labor Relations Board (NLRB). It has two members and cannot function. There are enormous delays which prejudice both labor and management where cases take 5 years or more before they come up.

I regret the necessity to excuse myself at this point, but the Judiciary Committee is having a very key hearing on the confirmation for the Sixth Circuit, and I am the ranking member there. So, I will be following the hearing closely. We will have some questions for the record. My absence will not be really missed because I note the presence of our distinguished ranking member, Senator Thad Cochran.

Thank you.

Senator HARKIN. Thank you.

Senator Cochran.

#### STATEMENT OF SENATOR THAD COCHRAN

Senator COCHRAN. Mr. Chairman, thank you. I am glad to be here to join you in welcoming the distinguished Secretary of Labor to our committee to review the budget request for the next fiscal year.

It is increasingly important, I think, that our Nation's workers and employers have the necessary resources to meet the demands of the global economy. We have always tried to work with the administration to ensure that American workers receive both the education and the skill preparations they need to enter and maintain in a quality performance level in our workforce.

But increasingly higher levels of education and advance skills are required to be competitive in the new environment. That is why I am pleased to see the President include in the budget a request for approximately \$7.3 billion for the Department's Employment and Training Administration (ETA), which is designed to increase the competitiveness of the American workforce. I look forward, Madam Secretary, to hearing your ideas on how these programs will evolve and how the funds will be used to accomplish this important goal.

Getting our youth more interested and involved in the opportunities of the workplace will help fill the demands of our labor force in the years ahead. The Job Corps and YouthBuild programs are good examples of how we can reach young people and provide the training they need to be productive members of the workforce. The President includes a request for \$1.5 billion and \$50 million, respectively, for these two programs. Your perspective on the future of the programs and how these funds will be put to use would be appreciated.

Madam Secretary, I know the challenges the Department faces are very interesting and unique, particularly in the development and maintenance of our labor market. I am impressed with your efforts and hard work over the years and certainly those efforts

that are designed to maintain qualified and sustainable workforce participants. That is critical to our Nation's future.

Thank you.

Senator HARKIN. Thank you very much, Senator Cochran.

Madam Secretary, again, welcome to the committee and the floor is yours. Please proceed as you so desire.

#### SUMMARY STATEMENT OF HON. ELAINE L. CHAO

Secretary CHAO. Thank you, Mr. Chairman, Senator Cochran, for the opportunity to present the administration's fiscal year 2009 budget for the Department of Labor.

The total Department budget is \$53.1 billion, of which \$10.5 billion is for discretionary spending.

The Department's fiscal year 2009 budget focuses on five overall priorities: protecting worker safety and health; protecting workers' pay, benefits, pensions, and union member rights; securing the employment rights of America's veterans; increasing the competitiveness of America's workforce; and modernizing the temporary foreign labor certification programs.

In fiscal year 2009, \$1.4 billion is requested for the Department's worker protection activities. The Department has consistently increased our budget for worker protection, and the Department has consistently requested increases in our budget for worker protection activities. Over the last 7 years, we have seen consistent record results on worker safety and protection.

In terms of MSHA, \$332.1 million and 2,361 FTEs are requested. Please note again that we are increasing funding for enforcement. While there was a slight reduction over the fiscal year 2008 enacted level, this is due to the fact that some funds appropriated for fiscal year 2008 were one-time expenses, including the overtime, travel expenses, and new roof needed in the training facility in Beckley, West Virginia. This request enables MSHA to continue implementing the historic MINER Act and maintains our strong commitment to mine safety and health. It includes \$7.4 million specifically targeted to support and train an additional 55 mine safety enforcement personnel. This is also in addition to the 304 coal enforcement personnel hires since June 2006. This budget will support MSHA's efforts to finalize rules on belt air and mine refuge chambers and vigorously enforce increased monetary penalties.

Our fiscal year 2009 request also includes \$501.7 million and 2,173 FTEs for OSHA. This is, again, a 3 percent increase over last year's enacted level.

The request for ESA is for \$468.7 million and 3,190 FTEs.

This includes \$193 million and 1,283 FTEs for Wage and Hour including \$5.1 million to hire an additional 75 inspectors. The ESA request also includes \$89 million and 585 FTEs for OFCCP, and another \$110 million and 872 FTEs are requested for the Worker Compensation programs.

Let me note that the Department of Labor recently passed a \$3.5 billion mark in compensation to EEOICPA beneficiaries, and initial decisions have been made in all of the 22,000 part E cases that were transferred to DOL from the Department of Energy in 2004.

The ESA request also includes \$58.3 million and 369 FTEs for the Office of Labor-Management Standards. This is the same request as requested last year.

There seems to be some angst among some special interest groups about the increases in this budget. This is less than one-tenth of 1 percent in the total budget of the Department of Labor. 1,500 audits were conducted in 1985. By the end of 2000, the number of audits had dropped below 220. We are merely trying to restore the budget and enforce the law.

For EBSA, the request is \$147.9 million. This is an increase of 6 percent over the fiscal year 2008 levels, and a total of 867 FTEs.

For VETS, our budget request is \$238.4 million and 234 FTEs. This is a 5 percent increase over the previous year's enacted level.

#### PREPARED STATEMENT

As you know, our country is transitioning to a knowledge-based economy. New jobs are being created, but many require more education and higher skills. It is noteworthy to note that States have carried forward over \$1 billion in unspent Workforce Investment Act funds on average every year. There is an urgent need for worker training now, and I will be more than glad to talk about ETA and the budget and what we should do about reforming the system to better suit the needs of workers in the 21st century economy.

Thank you.

[The statement follows:]

#### PREPARED STATEMENT OF ELAINE L. CHAO

Good morning Mr. Chairman, Senator Specter, distinguished members of the subcommittee, ladies and gentlemen. Thank you for the opportunity to appear before you today to present the fiscal year 2009 budget for the Department of Labor.

The total request for the Department in fiscal year 2009 is \$53.1 billion and 16,848 FTE, of which \$13 billion is before the committee. Of that amount, \$10.5 billion is requested for discretionary budget authority. Our budget request will allow us to build on the accomplishments achieved in recent years and enable the Department to meet its critical priorities for fiscal year 2009, while helping to achieve the President's deficit reduction goals by reforming programs and reducing or eliminating ineffective or duplicative activities.

#### NOTABLE ACCOMPLISHMENTS

Over the past 7 years, the Department's agencies that protect workers' health, safety, benefits, pay, and union member rights have achieved record-setting results for America's workers and their families. For example:

- Since 2001, the Wage and Hour Division has increased by 67 percent the back wages recovered for workers. In 2007 alone, a record \$220.6 million was recovered for workers, including many vulnerable workers in low-wage industries, who did not receive the wages they were due.
- Between 2001 and 2007, the Employee Benefits Security Administration, which has oversight over nearly every private pension plan in America, closed over 28,000 civil cases and over 1,200 criminal cases; recovered or protected nearly \$11 billion for plans and participants; and, working with the Department of Justice and State and local prosecutors, obtained indictments against more than 800 individuals for crimes against plans and participants.
- Since 2001, the workplace fatality and serious injury and illness rates have fallen to record lows. Since 2002, the overall injury and illness rate has declined by 17 percent and the worker fatality rate has remained at historically low levels. Perhaps most notable is the reduction in the fatality rate among Hispanic workers, which has declined by 17 percent since 2001.
- Since 2001, the Department's Office of Federal Contract Compliance Programs has posted record results in enforcing equal opportunity rights for employees of Federal contractors, with an increase in financial recoveries of 78 percent be-

tween 2001 and 2007. Our efforts to ensure that Federal contractors achieve equal opportunity workplaces resulted in a 245 percent increase from fiscal year 2001 to fiscal year 2007 in the number of Americans recovering back pay and benefits.

- Since 2001, we have rebuilt the Department's Office of Labor-Management Standards' capability to enforce the laws that require union transparency and protect union democracy. As a result, from fiscal year 2001 to fiscal year 2007, the number of financial compliance audits has risen by 226 percent, and the number of convictions has increased by 16 percent.
- We have implemented a number of new programs to assist America's veterans. The Department launched the national HireVets First campaign designed to help employers tap this pool of talent as our service men and women transition to civilian life. In 2004, the Department created REALifelines, a comprehensive new program to provide individualized job training, counseling, and re-employment services to each and every service member seriously injured or wounded in the War on Terrorism.

#### FISCAL YEAR 2009 PRIORITIES

The Department's fiscal year 2009 budget seeks to build on the success of previous years. The budget features five critical priorities: protecting workers' safety and health; protecting workers' pay, benefits, pensions, and union member rights; modernizing the temporary foreign labor certification programs; providing additional resources and services for our Nation's veterans and transitioning service members; and increasing the competitiveness of America's workforce. In fiscal year 2009, the Department will continue to pursue regulatory reforms and strengthening policies that encourage growth, job creation, and opportunity.

#### PROTECTING WORKERS' SAFETY AND HEALTH

The 2009 budget includes \$1.5 billion in discretionary funds for DOL's worker protection activities. Within this funding level, \$833.7 million is requested to enable the Department to continue to pursue its record-setting protection of workers' safety and health.

##### *Mine Safety and Health Administration (MSHA)*

The fiscal year 2009 budget request for MSHA is \$332.1 million and 2,361 FTE. The request will allow MSHA to continue implementing the historic Mine Improvement and New Emergency Response (MINER) Act, the most sweeping mine safety legislation in 30 years.

The request includes \$7.4 million specifically targeted to support and train an additional 55 mine safety enforcement personnel. These additional personnel, in addition to the more than 300 enforcement personnel hired since July 2006, will enable MSHA to complete 100 percent of mandated annual mine inspections in both coal and metal and nonmetal mines. The 2009 budget will also support MSHA's work to finalize rules on belt air and mine refuge alternatives and implement stronger civil penalties, in accordance with the final rules published in fiscal year 2007 and fiscal year 2008.

##### *Occupational Safety and Health Administration (OSHA)*

The fiscal year 2009 budget request for OSHA is \$501.7 million and 2,173 FTE. The request provides resources to support 87,200 Federal and State safety and health inspections.

The request reflects an increase of \$15.7 million and 47 FTE above fiscal year 2008, which includes an increase of \$11.4 million to support enforcement programs and \$5.2 million to provide compliance assistance to employers and employees, especially small businesses. The budget supports OSHA's balanced approach to worker safety and health which includes aggressive enforcement, cooperative programs, outreach, and education.

#### PROTECTING WORKERS' PAY, BENEFITS, AND UNION DUES

In fiscal year 2009, the Department will also continue its high priority programs to protect workers' pay, benefits and union dues.

##### *Employment Standards Administration*

The Department's Employment Standards Administration (ESA) is DOL's largest agency, which administers and enforces a variety of laws designed to enhance the welfare and protect the rights of American workers. The fiscal year 2009 budget re-

quest includes discretionary resources for ESA administrative expenses of \$468.7 million and 3,190 FTE, and a proposal to cancel \$30 million in H-1B fund balances.

#### *Wage and Hour Division*

The Wage and Hour Division is responsible for the administration and enforcement of a wide range of worker protection laws, including the Fair Labor Standards Act, Family and Medical Leave Act, Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary non-immigrant visa programs, and prevailing wage requirements of the Davis-Bacon Act and the Service Contract Act. These laws collectively cover virtually all private sector workers, as well as State and local government employees.

The fiscal year 2009 budget request for the Wage and Hour Division totals \$193.1 million and 1,283 FTE, which excludes \$31 million in estimated fee revenue from DOL's portion of the H-1B visa fraud prevention fee authorized by the 2004 H-1B Visa Reform Act. Given the strict statutory limits on the use of these funds, DOL has only been able to spend around \$6 million in any single year. Therefore, the fiscal year 2009 budget cancels \$30 million of the H-1B fund balances and proposes amendments to the Immigration and Nationality Act to permit a more effective use of the fraud prevention fees collected under this provision.

The fiscal year 2009 budget also includes \$5.1 million to hire an additional 75 Wage and Hour enforcement staff to target resources on industries and workplaces that employ low-wage immigrant workers. Finally, the fiscal year 2009 Budget includes \$962,500 for seven legal enforcement support FTE for the Office of the Solicitor.

#### *Office of Federal Contract Compliance Programs*

The fiscal year 2009 budget request for the Office of Federal Contract Compliance Programs (OFCCP) totals \$89 million and 585 FTE. OFCCP is responsible for ensuring equal employment opportunity and non-discrimination in employment for businesses contracting with the Federal Government. OFCCP carries out this mandate by conducting compliance evaluations to identify instances of systemic discrimination in the workplace, taking appropriate enforcement action, and providing relevant and effective compliance assistance programs. The fiscal year 2009 budget request for OFCCP includes \$2 million to launch the design phase of the Federal Contractor Compliance System, a new case management system to improve the effectiveness and efficiency of OFCCP's compliance and enforcement strategies. It will replace the existing OFCCP Information System, which was developed more than 20 years ago and is functionally inadequate to meet current program needs.

#### *Office of Workers' Compensation Programs*

The fiscal year 2009 discretionary Budget request for administration of the Office of Workers' Compensation Programs (OWCP) totals \$110.2 million and 872 FTE to support the Federal Employees' Compensation Act (FECA) (\$96.2 million) and the Longshore and Harbor Workers' Compensation program (\$14.1 million). The fiscal year 2009 budget for the Longshore program includes \$500,000 for addressing workers' compensation claims submitted under the Defense Base Act for civilian workers in Iraq and Afghanistan.

The OWCP budget includes mandatory funding totaling \$108.2 million and 598 FTE for the Department's role in administering the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). EEOICPA provides compensation and medical benefits to employees or survivors of employees of the Department of Energy and certain of its contractors and subcontractors, who suffer from a radiation-related cancer, beryllium-related disease, chronic silicosis or other covered illness as a result of work at covered Department of Energy or DOE contractor facilities. The 2009 budget requests that resources for the EEOICPA program activities carried out by the National Institute for Occupational Safety and Health be requested directly in the Department of Health and Human Services budget. This funding request will enhance congressional oversight, while improving the financial management and transparency of EEOICPA's dose reconstruction and Special Exposure Cohort program.

Lastly, OWCP's fiscal year 2009 budget includes \$37 million in mandatory funding and 195 FTE for its administration of Parts B and C of the Black Lung Benefits Act, and \$52.7 million and 127 FTE in FECA Fair Share administrative funding.

The 2009 budget includes two legislative proposals affecting OWCP programs that play a critical role in protecting workers' economic security, by providing monetary and medical benefits to Federal employees and coal miners whose ability to work has been diminished by an occupational injury or illness. The first re-proposes reforms to FECA to update its benefit structure, adopt best practices of State workers' compensation systems, and strengthen return-to-work incentives. This proposal is



expected to generate Government-wide savings of \$377 million over 10 years. The second is a proposal to restructure, and eventually retire, the mounting debt of the Black Lung Disability Trust Fund—a debt that now stands at \$10 billion.

#### *Office of Labor-Management Standards*

The fiscal year 2009 Budget request for the Office of Labor-Management Standards (OLMS) totals \$58.3 million and 369 FTE. OLMS enforces provisions of Federal law that establish standards for union democracy and financial integrity. OLMS conducts investigative audits and criminal investigations, primarily for embezzlement; conducts civil investigations of union officer elections and supervises remedial elections where required; administers statutory union financial reporting requirements; and provides for public disclosure of filed reports. OLMS also administers employee protective provisions created under Federal transit legislation. The resources requested will allow OLMS to continue all core mission work and to further the goals of union financial integrity, democracy, and transparency.

#### *Employee Benefits Security Administration*

The Department's Employee Benefits Security Administration (EBSA) protects the integrity of pensions, health plans, and other employee benefit plans holding some \$5.6 trillion in assets for more than 150 million Americans. The fiscal year 2009 budget request for EBSA is \$147.9 million and 867 FTE. The request will maintain the strong enforcement record of recent years, and support oversight of pension and health care plans and other employee benefits. Also in fiscal year 2009, EBSA will transition to a streamlined, entirely electronic filing system for the Form 5500 Annual Report which is filed by approximately 1 million employee benefit plans. These reports provide essential information on pension and other benefit plans' financial condition, investments, and operations. The move to electronic filing will substantially reduce processing times for the Form 5500 and improve the reliability of the data reported on the form. By making data on the funding of pension and other benefit plans more transparent and accessible, this new system will support the President's efforts to strengthen retirement security for the Nation's workers and retirees.

#### *Pension Benefit Guaranty Corporation*

The fiscal year 2009 request for the Pension Benefit Guaranty Corporation's (PBGC) administrative expenses is \$444.7 million. The PBGC is now responsible for paying the benefits of 1.3 million workers and retirees. While the Pension Protection Act of 2006 made significant structural changes to the retirement system, the PBGC is still not solvent on a long-term basis. Although PBGC will be able to pay benefits for some years to come, it is projected to be unable to meet its long-term obligations under current law. Further reforms are needed to address the \$14 billion gap between PBGC's liabilities and its assets. If there is not enough money in the system to cover worker benefits, taxpayers are at risk for having to cover the shortfall. The fiscal year 2009 budget proposes to give PBGC's Board the authority to adjust premiums to produce the revenue necessary to meet expected future claims and retire PBGC's deficit over 10 years. Proposed premium reforms will improve PBGC's financial condition and safeguard the future benefits of American workers and retirees.

### INCREASING THE COMPETITIVENESS OF AMERICA'S WORKFORCE

#### *Reforming the Workforce Investment System*

The fiscal year 2009 budget request for the Department's Employment and Training Administration (ETA) is \$6.3 billion in discretionary funds and 1,148 FTE, which includes the 152 FTE associated with the legislative proposals for application fees in the permanent and temporary labor certification programs. Through innovative reforms, the budget request for ETA will allow the Department to increase the competitiveness of the American workforce in a knowledge-based economy.

The United States competes in a global economy that is far different from the international markets of the past. In the future, as in the past, our long-term economic growth will also be enhanced by supporting international trade, by opening world markets to U.S. goods and services and by keeping our markets open. Congress can help create jobs and economic opportunity by passing the pending Free Trade Agreements with Colombia, Panama and South Korea. As our Nation's economy and businesses transform to meet the challenges of the 21st century, so too must the Government systems and structures that support our economic growth and job creation.

It is in this context that the President has sought to transform worker training programs into a demand-driven system that prepares workers for jobs in growth sectors of the economy. The workforce investment system should recognize and

strengthen workers' ownership of their careers, and provide more flexible resources and services designed to meet their changing needs.

American workers will need higher levels of education and skills than at any time in our history, as evidenced by the fact that almost 90 percent of new jobs in high-growth, high-wage occupations are expected to be filled by workers with at least some post-secondary education. However, the current workforce investment system does not provide the necessary education and training opportunities for workers. Too much money is spent on competing bureaucracies, overhead costs, and unnecessary infrastructure, and not enough on meaningful skills training that leads to employment opportunities and advancement for workers.

To increase the quality of training offered, as well as the number of workers trained, the Department proposes legislative reforms to consolidate funds for the following programs into a single funding stream:

- Workforce Investment Act (WIA) Adult Program;
- WIA Dislocated Worker Program;
- WIA Youth Program; and
- Employment Service programs (including Employment Service formula grants, labor market information grants, and grants for administration of the Work Opportunity Tax Credit).

States would use these funds primarily to provide Career Advancement Accounts (CAAs) to individuals who need employment assistance. CAAs are self-directed accounts of up to \$3,000, an amount sufficient to finance approximately 1 year's study at a community college. The accounts could be renewed for one additional year, for a total 2-year account amount of up to \$6,000 per worker. CAAs would be used to pay for expenses directly related to education and training. The accounts would be available to both adults and out-of-school youth entering the workforce or transitioning between jobs, and incumbent workers in need of new skills to remain employed. The funds would also be used by States to provide basic employment services such as career assessment, workforce information, and job search assistance to job seekers. By removing bureaucratic restrictions that can prevent workers from being trained, increasing the flexibility of State and local officials to shift funding to where it is most needed, and requiring the majority of dollars in the system to be spent on training, these reforms will significantly increase the number of individuals who receive job training and attain new and higher-level job skills.

#### *Community-Based Job Training Initiative*

The fiscal year 2009 budget provides \$125 million for the fifth year of grants under the President's Community-Based Job Training Initiative. This competitive grant program leverages the expertise of America's community colleges and takes advantage of the strong natural links between community colleges, local labor markets and employers to train workers for jobs in high-demand industries. In October 2005, the Department awarded the first grants totaling \$125 million to 70 community colleges in 40 States. A second competition for Community-Based Job Training Grants was held in the summer of 2006, and in December 2006, the Department awarded \$125 million in grants to 72 entities in 34 States. In March 2008, the Department awarded \$125 million to 69 community colleges and community-based institutions that competed successfully for the third round of Community-Based Job Training Grants. The administration strongly supports providing standalone funding for this program, rather than redirecting funds from the National Reserve, which should be preserved to allow the Department to respond to emergency and unanticipated situations.

#### *Foreign Labor Certification*

The fiscal year 2009 budget builds on our successes in reforming the Foreign Labor Certification programs. The Department has eliminated the backlog in the Permanent (PERM) program, which peaked at 363,000 applications in 2005. In the fiscal year 2009 budget, the Department is requesting \$78 million for the foreign labor programs, an increase of \$24 million from fiscal year 2008. The request includes \$7.5 million for a new case management system for the foreign labor programs, \$5.7 million to assist States in processing anticipated H-2A and H-2B workload increases, \$4 million for Federal staff to process anticipated workload increases, and \$6.2 million to restore funds for inflationary costs not provided under the fiscal year 2008 Omnibus appropriation. This system will allow on-line application filings, replace four separate systems with a single integrated system, and combat fraud by allowing ETA to track employers' use of the various programs.

In fiscal year 2009, the Department will complete its reforms to the H-2A and H-2B Temporary Labor programs. The budget also proposes legislation to authorize cost-based, employer-paid application fees in the foreign labor programs to cover the

costs of running the programs. This will enable the programs to efficiently manage the workload with a predictable funding source. It is essential to prevent the re-emergence of backlogs in the PERM program, and to streamline processing under the temporary programs.

#### *A Second Chance for Ex-Offenders*

As you know, last month the President signed into law the Second Chance Act of 2007. This act builds on the work begun under the President's Prisoner Re-Entry Initiative, and authorizes the Department of Labor to award grants to nonprofit organizations to provide mentoring, job training and job placement services to assist eligible offenders in obtaining and retaining employment. The Second Chance Act authorizes \$20 million to be appropriated in each of fiscal years 2009 and 2010 for these grants. The administration will work with the Congress to determine the appropriate level of funding for the new program within the fiscal year 2009 Budget request of \$39.6 million for Reintegration of Ex-Offenders, the predecessor pilot program.

#### *Strengthening Unemployment Insurance Integrity and Promoting Re-Employment*

The fiscal year 2009 budget continues the administration's efforts to ensure the financial integrity of the Unemployment Insurance (UI) system, and help unemployed workers return to work promptly. Our three-pronged approach includes:

- A package of legislative changes that would prevent, identify, and collect UI overpayments and delinquent employer taxes. These changes include: allowing States to use a small amount of recovered overpayments and collected delinquent taxes to support additional integrity efforts; authorizing the U.S. Treasury to recover UI benefit overpayments and certain delinquent employer taxes from Federal income tax refunds; requiring States to impose a penalty on UI benefits that individuals obtain through fraud and using those funds for integrity activities; and requiring employers to include a "start work" date on New Hire reports to help identify persons who have returned to work but continue to receive UI benefits. We estimate that these legislative proposals would reduce overpayments of UI benefits by \$5 billion and employer tax evasion by \$400 million over 10 years.
- A \$40 million discretionary funding increase over the fiscal year 2008 enacted level to expand Reemployment and Eligibility Assessments, which review UI beneficiaries' need for re-employment services and their continuing eligibility for benefits through in-person interviews in One-Stop Career Centers. This initiative has already yielded quicker returns to work for UI beneficiaries. We estimate that a total of \$155 million in benefit savings could result from this investment.
- A legislative proposal to permit waivers of certain Federal requirements to allow States to experiment with innovative projects aimed at improving administration of the UI program, and speeding the re-employment of UI beneficiaries.

We urge the Congress to act on these important proposals to strengthen the financial integrity of the UI system and help unemployed workers return to work.

#### *Senior Community Service Employment Program*

The fiscal year 2009 budget requests \$350 million for the Senior Community Service Employment Program (SCSEP). At this level, SCSEP will support 72,000 participants. This program was rated "ineffective" by the Performance Assessment Rating Tool (PART), largely due to inadequate competition in the grants process, lack of data on program performance and impact, and duplication with other Federal programs. Recent legislative reforms, though limited in terms of their promotion of competition, will promote improvement in program efficiency (allowing more participants to be served per dollar), collection of performance data, and the share of participants placed in unsubsidized jobs.

#### *Job Corps*

The budget includes \$1.6 billion to operate a nationwide network of 123 Job Corps centers in fiscal year 2009. Job Corps provides training to address the individual needs of at-risk youth and ultimately equip them to become qualified candidates for the world of work. The request includes \$59 million for the construction of new Job Corps centers. In the fiscal year 2006 appropriation act, the Congress directed the Department to transfer the Job Corps program out of the Employment and Training Administration (ETA) into the Office of the Secretary. The 2009 budget again proposes to return the program to ETA, where it had been administered for more than 30 years, to ensure close coordination with the other job training and employment programs administered by ETA, including the YouthBuild program.

## SECURING EMPLOYMENT RIGHTS AND OPPORTUNITIES FOR VETERANS

*Veterans' Employment and Training Service*

This Nation's commitment to our veterans must be honored. No veteran should return home without the support that is needed to make the transition back to private life a smooth and successful one. For the Department's Veterans' Employment and Training Service (VETS), the fiscal year 2009 budget request is \$238.4 million and 234 FTE. This will enable VETS to maximize employment opportunities for veterans and protect their employment and re-employment rights.

The \$168.9 million requested for VETS to provide State grants under the Jobs for Veterans Act includes an increase of \$7 million above the fiscal year 2008 level and will help approximately 700,000 veterans seeking employment in the civilian workforce. The additional funds will help serve 185,000 Transition Assistance Program (TAP) participants in domestic and overseas workshops, an increase of 25,000 participants above the fiscal year 2008 level. TAP employment workshops play a key role in reducing jobless spells and helping service members transition successfully to civilian employment. The fiscal year 2009 budget includes \$25.6 million for the Homeless Veterans Reintegration Program (HVRP), allowing the program to provide employment and training assistance to an estimated 15,100 homeless veterans. The fiscal year 2009 request will also enable VETS' staff to more effectively administer the Uniformed Services Employment and Reemployment Rights Act (USERRA) to protect the civilian employment opportunities and re-employment job rights and benefits of veterans and members of the armed forces, including members of the Guard and Reserve.

## OTHER PROGRAMS

*Bureau of Labor Statistics*

In order to maintain the development of timely and accurate statistics on major labor market indicators, the fiscal year 2009 budget provides the Bureau of Labor Statistics (BLS) with \$592.8 million and 2,418 FTE. This funding level allows BLS to focus resources on its core surveys that produce sensitive and critical economic data, including the Consumer Price Index (CPI) and the monthly Employment Situation report. The CPI is a key measure of the Nation's economic well-being that directly affects the income of millions of Americans. To ensure that the CPI is accurate and up-to-date, the Budget includes funding of \$10.4 million to continually update the housing and geographic samples that underlie the index to ensure that these samples fully incorporate the most recent demographic and geographic trends and changes. The current sample was derived from the 1990 Census and has not been updated since the late 1990s. In addition, the budget requests \$8.7 million to cover the rising cost of the Current Population Survey, including enhanced efforts to safeguard respondent confidentiality, secure data, and maintain response rates.

*Office of Disability Employment Policy*

The fiscal year 2009 budget request provides the Office of Disability Employment Policy (ODEP) with a total of \$12.4 million and 40 FTE. The fiscal year 2009 budget reflects the elimination of ODEP's grant-making function, which duplicates those of other Federal agencies. The fiscal year 2009 budget returns ODEP to its core mission of providing national leadership in developing disability employment policy and influencing its implementation to increase employment opportunities and the recruitment, retention and promotion of people with disabilities. The request also includes a transfer of \$550,000 to the BLS to finalize ODEP's partnership with BLS in the development and testing, and for BLS to begin and sustain monthly publication, of the unemployment rate for people with disabilities.

*Bureau of International Labor Affairs*

The request for the Bureau of International Labor Affairs (ILAB) in fiscal year 2009 is \$14.8 million and 58 FTE. In recent years, ILAB has had a very large grant-making function. Several Federal agencies have grant initiatives that support the objectives of improving international labor conditions and providing educational opportunities to children. DOL believes funding for such international grant activities should be provided to the Department of State, so it can better coordinate these projects. The Budget returns ILAB to its mission of developing international labor policy and performing research, analysis, and advocacy. The President's Budget also includes \$1.5 million to allow ILAB to monitor the use of forced labor and child labor in violation of international standards, as required in the Trafficking Victims Protection Reauthorization Act of 2005.

The requested funding levels would allow ILAB to implement the labor supplementary agreement to NAFTA and the labor provisions of trade agreements nego-

tiated under the Trade Act of 2002, participate in the formulation of U.S. trade policy and negotiation of trade agreements, conduct research and report on global working conditions, assess the impact on U.S. employment of trade agreements, and represent the U.S. Government before international labor organizations, including the International Labor Organization.

ILAB will continue to implement ongoing efforts in more than 75 countries funded in previous years to eliminate the worst forms of child labor and promote the application of core labor standards.

#### *Office of the Solicitor*

The fiscal year 2009 budget includes \$108.2 million and 643 FTE for the Office of the Solicitor (SOL). This amount includes \$100.8 million in discretionary resources and \$7.4 million in mandatory funding. The Solicitor's Office provides the legal services that support all of the five critical priorities of the Department, including litigation and legal advice necessary to the success of the Department's enforcement programs. This appropriation level will allow SOL to provide legal services and legal enforcement support for the nearly 200 laws the Department must enforce, including recently enacted legislation to strengthen mine safety and retirement security. The requested appropriation level is essential to allow SOL to fulfill its primary mission of ensuring that the Nation's labor laws are forcefully and fairly applied, and providing the legal assistance necessary to ensure that the Department's mission goals identified for fiscal year 2009 are achieved.

#### *Women's Bureau*

The fiscal year 2009 budget includes \$10.2 million and 60 FTE for the Women's Bureau. This budget will allow the Women's Bureau to continue its mission of designing innovative projects addressing issues of importance to working women and providing information about programs and policies that help women succeed in the 21st century workplace.

#### *President's Management Agenda and Department-wide Management Initiatives*

Before I close today, Mr. Chairman, I also want to highlight the Department's sustained efforts to implement the President's Management Agenda (PMA). In August 2001, President Bush sent to Congress his Management Agenda, a strategy for improving the management and performance of the Federal Government. The PMA called for focused efforts in the following five Government-wide initiatives aimed at improving results for citizens: Strategic Management of Human Capital; Competitive Sourcing; Improved Financial Performance; Expanded Electronic Government; and the Performance Improvement Initiative (formerly Budget and Performance Integration). DOL is also responsible for three of the PMA initiatives that are found only in selected departments: Faith-Based and Community Initiative, Real Property Asset Management, and Eliminating Improper Payments.

I am proud to say that, in June 2005, the Department became the first Cabinet agency to earn "green" ratings in all five Government-wide PMA initiatives. Through the PMA, the Department placed a strong emphasis on human capital and E-Government—both of which strengthen the integration of all the PMA initiatives. DOL's MBA Fellows program—which I established in 2002—has been successful in bringing on bright new talent as we build a foundation of future leaders at the Department. And our E-Government efforts have provided numerous solutions that have supported our management efforts. I remain particularly proud of the Department's role as the managing partner of GovBenefits.gov—a partnership of Federal agencies that provides improved, personalized access to Government programs.

DOL is making progress and achieving results in eliminating improper payments. To better support these efforts, DOL was instrumental in ensuring the enactment of the State Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004—which President Bush signed into law in August 2004. This law provided State UI programs access to the National Directory of New Hires (NDNH). In 2005, the Department's Office of the Chief Financial Officer and the Employment and Training Administration launched an Unemployment Insurance (UI) pilot program in three States to determine how a cross-match between the NDNH and State UI claimant data could help identify individuals no longer eligible to receive UI benefits. The pilot program showed significant potential to detect and reduce improper payments and now 41 States are actively matching against the NDNH. These steps have resulted in the saving of millions of taxpayer dollars, but we have more work to do—and we are committed to seeing this effort through to the end.

In recognition of our efforts since 2001, DOL has been honored with four President's Quality Awards from the Office of Personnel Management for our achievements and management excellence in implementing the PMA.

The Program Assessment Rating Tool, or PART, remains central to our efforts at the Department of Labor to improve the performance of our programs. To date, 35 DOL programs have been assessed through the PART. The PART assessments have not only been useful to informing the public and policy makers of our programs' strengths and weaknesses, but they have provided our programs and their managers a systematic method of self-assessment. A PART review helps inform both funding and management decisions aimed at making programs more effective. The Department is actively implementing program improvements identified through PART assessments—and looks forward to building upon our progress to date.

#### CONCLUSION

With the resources we have requested for fiscal year 2009, the Department will continue its strong enforcement of worker protection laws, provide innovative programs to increase the competitiveness of our Nation's workers, secure the employment rights of veterans, and maintain fiscal discipline.

Mr. Chairman, this is an overview of the programs we have planned at the Department of Labor for fiscal year 2009.

I am happy to respond to any questions that you may have.

Thank you.

Senator HARKIN. Madam Secretary, if you have more—I do not know why that light was on like that. If you have more, take the time you needed to finish. I did not mean to have that stop at 5 minutes.

Secretary CHAO. No. I think that is fine. Thank you.

Senator HARKIN. There was not anything else you wanted to—

Secretary CHAO. I saw the light coming, so I kind of skipped through this really quickly.

Senator HARKIN. Well, I am sorry about that. I did not mean to have that come on at 5 minutes. I just noticed it myself. Well, that is all right for our questions, but not for her statement. So I apologize.

Secretary CHAO. No, not at all. We try to be very responsive to you.

Senator HARKIN. Well, thank you, Madam Secretary. I appreciate that.

#### NONCOMPETITIVE GRANTS

Madam Secretary, let me get right into it here. Something that has been of interest to me for the last couple of years is the awarding of noncompetitive grants by the Department of Labor.

In his veto message last year, the President stated that “this bill has too many earmarks. Congressional earmarks divert Federal taxpayer funds to localities without the benefit of a merit-based process. Americans sent us to Washington to achieve results and be good stewards of their hard-earned tax dollars.”

Now, for the record I want to point out that less than—much less than—1 percent of the funds in the bill were subject to congressionally directed spending.

However, from 2001 to 2006, the Department of Labor earmarked more than \$250 million under the High Growth Job Training Initiative without any competition or transparency. Now, Federal regulations allow for the awarding of noncompetitive grants in certain situations.

However, 90 percent of these funds raised serious questions for me. So last year I asked the DOL Inspector General to examine how these decisions were made and what we have achieved with these funds. The IG's report includes some troubling findings, in-

cluding inadequate justification for the grant decisions, unfulfilled commitments by grantees to provide matching funds, and insufficient monitoring and evaluation of grant activities.

So, Madam Secretary, your Department responded to the recent IG report by maintaining that it was not necessary or valuable to formally evaluate all grant activities. Well, how does that square with the President's veto message when he said that he was opposed to earmarks? How does that square with that? I mean, \$250 million.

Secretary CHAO. The High Growth Job Training Initiative was originally designed to help the workforce investment system become more demand-driven. What we want to make sure is that when dislocated workers, unemployed workers invest their time and trust in us to come into our training system, that we give them relevant training. So the High Growth Job Training Initiative was to be a demand-driven program.

Due to the broad-based demand for this kind of program, we had 450 unsolicited bids. In an effort to quickly and strategically respond to the workforce challenges identified by the high growth industries who were lacking skilled workers, this program was initiated.

It was ETA's intent always from the beginning to go into a competitive mode, and after this initial phase, all High Growth Job Training grants are awarded through a competitive process.

Just because it did not go through a competitive process, did not mean that it did not go through a solicitation process within the Department. There is something called the Procurement Review Board which reviews all sole-source contracts, and all of these contracts went through that.

Second of all, these were all pilot programs. So after the pilot programs were initiated, they were all competitively bid.

The IG report itself acknowledges that they only examined 10 of the 133 noncompetitive grants and that many others, in fact, were fine. If you look at the number of the 10 grantees reviewed in the audit, they included the Service Employees International Union, the Down River Community Conference, the Shoreline Community College, the Maryland Department of Labor. This is a very wide base and it was a demand-driven initiative to fulfill the needs of our economy for high-skilled workers. Again, the purpose is to ensure that workers are getting relevant training, so when they graduate from our programs, they can actually get a real job.

Senator HARKIN. Well, Madam Secretary, I have here the years from 2001 to 2007. Competitive grants, 2001, 0; 2002, 0; 2003, 0; 2004, 0; 2005, 12; 2006, 0; and 2007, 17. I do not know what kind of planning that is to have—let me read you the noncompetitive.

Secretary CHAO. But the program did not start until 2003, number one.

Number two, when we are talking about our Department, we have a budget of \$10.5 billion. The majority, 99.9 percent, of the grants are, number one, formulaic or they are competitive grants. This is a very, very small part of the total number of grants that are given out.

Senator HARKIN. Madam Secretary, okay, let us take 2003. As I said, competitive, 0, 0, 12, 0. Last year 17. I will tell you why.

In noncompetitive grants, 2003, 15; 2004, 37; 2005, 55; 2006, 21; last year, 1. Now why was it one last year? Because in our bill last year, we said you cannot do that anymore.

Secretary CHAO. We responded.

Senator HARKIN. Yes, that is true. You did respond. I will hand you that. That is true.

But my point is that was \$263.8 million for 137 grants.

Secretary CHAO. Out of an annual budget of more \$10.5 billion.

Senator HARKIN. Well, now, would you like to come up here and argue for Congress's directed spending? Would you like to talk to your boss down at the White House?

Secretary CHAO. Not at all.

Senator HARKIN. You see why I am making this point. First of all, I am making the point that when we do congressionally directed funding—and the former chairman knows this—it is transparent, it is open, everybody knows about it, and we follow up on these.

Quite frankly, what the IG did—now, you mentioned 10. The first phase of the investigation by the IG took 39 grants, and in 90 percent of the samples, the DOL did not follow proper procedures for making earmarks, including a lack of documentation for how DOL made earmark award decisions. DOL has not required grantees to contribute their own funds or leverage funds from third parties, even though that was the basis for making noncompetitive awards in many cases. Now, that was the first phase.

The second phase, the IG reviewed 10 grantees that completed their activities to find out what they did and were the objectives met. Thirty percent of the grant objectives were not met or were not clear enough to determine whether they were met. For example, the National Retail Federation could only demonstrate that it placed in employment just more than half of the minimum 2,500 job seeker goals that it set. Then in four of the nine grants where DOL justified it on the basis that funding organizations would match the funds, the IG could not identify any matching funds at all.

So, again, we have said no. That is what our committee said, and obviously you have not done that anymore. You put one grant out but that was last fiscal year under the continuing resolution. So now we are going to go more to competitive grants.

Now, I will say this. There is one other item I have got relating to this, and that is that we included bill language in the last appropriations bill that required all the Departments under our jurisdiction to provide a report to this committee on all funding in excess of \$100,000 made available on a noncompetitive basis. The Education Department has submitted its report for the two quarters, the first quarter being last October, November, December; the second quarter, January, February, and March. We have gotten them. As of today, we have not received one of the required reports from the Department of Labor.

Secretary CHAO. That is correct.

Senator HARKIN. When are we going to get those?

Secretary CHAO. I think you might be pleased to hear that we have been overwhelmed with data requests from the Hill, number one. Number two, they have to go through clearance. So that cur-



rently is under clearance. I was made aware of it preparing for this hearing, and we are trying to get it out as quickly as possible.  
[The information follows:]

LIST OF REPORTS DELIVERED TO CONGRESS AFTER THE SECRETARY'S MAY 7TH HEARING  
[Reports—Completed and Submitted to Congress]

| Agency                        | Material  | Date submitted   |
|-------------------------------|---|--|
| OSHA .....                    | Issuance of OSH Standards .....                     | First quarterly report was sent to Congress on 5/15/08.            |
| OSHA .....                    | Regulatory Agendas .....                            | First quarterly report was sent to Congress on 5/15/08.            |
| All DOL .....                 | List of Non-Competitive Contracts, Grants & Awards. | First and second quarter reports delivered to Congress on 5/13/08. |
| ETA/TES .....                 | Status of H-1B and NEG Grants .....                 | First quarterly report was sent to Congress on 5/8/08.             |
| ETA/TES .....                 | Farmworker Housing Funds .....                      | The report was submitted to Congress on 5/16/08.                   |
| ESA/Wage Hour .....           | Contractors that employ pineros .....               | The report was submitted to Congress on 5/28/08.                   |
| DM/ASP, OSHA & ESA/Wage Hour. | National Plan on Pandemic Influenza Preparedness.   | The report was submitted to Congress on 5/16/08.                   |
| Job Corps .....               | Enrollment Levels .....                             | The report was submitted to Congress on 5/16/08.                   |
| EBSA .....                    | Schedule of EFAST2 .....                            | Fourth monthly report was sent to Congress on 5/30/08.             |
| ILAB .....                    | Operating Plan .....                                | The plan was submitted to Congress on 6/6/08.                      |

Senator HARKIN. Well, the Department of Education did not seem to have much of a problem complying.

Secretary CHAO. I usually beat Margaret Spellings on a whole bunch of things, so I am not very pleased that she has beat me to this one. But we are going to do better on that one.

Senator HARKIN. Okay. Well, we would like to have those. Again, one of the reasons we are asking that request again is to just find out what is happening on this and where these are going. As I said, we in Congress in our congressional funding now, we have to put it in the record. It has to be out there. It is all transparent. Everybody knows who is doing what. We just want to make sure this applies to the administration. I do not mean just yours. I mean every administration, that they have to do the same thing in every one of their Departments. So what is good for the goose is good for the gander I guess you might say.

Did my time run out? I will pick up some more questions. I think my 5 minutes are up here, but I will yield to Senator Cochran. Then I will pick up some more later.

Senator COCHRAN. We could use some skilled labor training to figure out how to work those.

Madam Secretary, thank you for the conscientious and effective work you have done as Secretary of Labor. I have been very impressed and we appreciate your service in that capacity.

YOUTHBUILD

In our State, we are troubled and concerned about the availability of labor to help us rebuild and recover from Hurricane Katrina, and that is true not only of Mississippi, but Louisiana certainly and other areas there. I know there is a program—and it is

funded in the budget request at \$50 million—called YouthBuild. I was wondering whether this is a program that could be helpful or has been used in training or trying to identify people who are at risk maybe because of the effects of the hurricane situation so we could put them to work maybe or training to fill some of the voids in the labor market so we can improve the performance of reconstruction. Low income housing comes to mind as an area where there might be a particular opportunity for at-risk youth to be employed there if they had the training and supervision necessary.

What is the Department of Labor able to do to help in that situation?

Secretary CHAO. You make a very good point about the short supply of skilled labor, trade labor, skilled trades people, workers. That has been a real problem down in the gulf area and in rehabilitating and rebuilding the gulf area.

At the risk of appearing as if I am going back to a topic that the chairman does not like, the High Growth Job Training Initiative actually includes skills training in the skilled trades because those are good paying jobs. They have good future prospects, and yet we have a dearth of skilled trades people in this country. So we do need to emphasize that.

On YouthBuild, that was recently transferred over from HUD to the Department of Labor. I am pleased to say that the transition appears to have gone well. Both Departments thought it was a much better fit for YouthBuild, which is more involved in skills training, to be shifted over to the Department of Labor.

Your suggestion that YouthBuild workers be more involved in the Gulf area recovery and rebuilding effort is a good one. I think there have been some efforts in incorporating these young people in this area, but certainly I think we can take another look at that and see how these young people can gain real life experience that would be very satisfying for them as they gain new skills and see the actual results of how their skills can help people.

#### JOB CORPS

Senator COCHRAN. One other program that I paid a lot of attention to when it was first created was Job Corps. Is that still an active program? Is it growing, or do you have the funds necessary to continue to support the efforts of Job Corps? What is your evaluation of its effectiveness?

Secretary CHAO. I have just come back from the reopening of the Cleveland Job Corps Center. This was a dilapidated, old facility that over the last 18 months saw a \$25 million renovation of its facilities. We want these young people—the national director Esther Johnson calls them at-promise young people—to feel pride in their surroundings and to have the right equipment and facilities with which to learn and gain new skills and put their lives back on track. So I went there yesterday, and I went also to the reopening of the Job Corps center in New Orleans just less than 3 months ago. So we have a very aggressive building program.

It is under some challenge because of funding pressures, but overall we are very focused on ensuring that Job Corps remains a strong program. The new director has been focusing on academics. We are very concerned about ensuring, again, that young people

get the skills that they need. So we have cut the budget for Job Corps in terms of the slots, which I think is a source of discussion, and we can talk more about that later. But we have about 4,000 slots that need to be reallocated, and part of that process is ongoing as well.

Senator COCHRAN. Well, thank you very much.

Thank you, Mr. Chairman.

Senator HARKIN. Thank you, Senator Cochran.

Let us just pick up on that because obviously Job Corps centers have broad support up here, and you actually cut it. What is the justification for cutting Job Corps centers?

Secretary CHAO. Well, the budget request maintains a level of service currently offered by the Job Corps program. I think there is a great deal of discussion about the empty slots. There are about 4,000 of them. We want to ensure that there is funding for all current students and any students who want to enter the program in the future. We want to continue making improvements and upgrades to the facilities, but there is this concern about unused slots which we can discuss as well.

#### OFFICE OF DISABILITY EMPLOYMENT POLICY

Senator HARKIN. Madam Secretary, this is not a trick question I am going to ask you. If you were to look at different groups of people, categories of workers, in our country, what group would spring to mind that would have the highest rate of unemployment?

Secretary CHAO. Probably young people and disabled.

Senator HARKIN. Disabled. Thank you. Much higher. The rate of unemployment among disabled people who actually look for work, who want work is—

Secretary CHAO. 70.

Senator HARKIN [continuing]. About 70 percent.

Secretary CHAO. Yes.

Senator HARKIN. It is one of the highest. Well, your budget proposes a cut of \$14.8 million, or a 54 percent cut, for the Office of Disability Employment Policy. I mean, now this screams out that something is wrong here. This budget proposal, I am told, would eliminate all grant activity at ODEP. What is the justification for a 54 percent cut in ODEP when we have the highest rate of unemployment in America among our people with disabilities? What is the justification for a 54 percent cut?

Secretary CHAO. Mr. Chairman, I know that you have a personal—I know that you are very committed to the disabled community.

Senator HARKIN. Actually you are too.

Secretary CHAO. I am too. I know that you started ODEP, and it would not have happened without you.

Senator HARKIN. Well, I appreciate that. I am not asking about your commitment. I know you are personally committed. I am just asking why this big a cut. This does not make sense to me.

Secretary CHAO. I think we are just going to have to differ on what the purpose—what the core mission of ODEP is. There seems to be a disagreement about whether ODEP should be a research or policy agency rather than a grantmaking agency. When we talk about grants, this is, in fact, one area in which we have been found

that we have been unable—that it has been very hard to gauge what has been the real achievements or results of these grants. What we should be doing is working more with the employer community and urging them, exhorting them to hire more Americans with disabilities. That is not done through primarily grants.

Senator HARKIN. Now, Madam Secretary, as you know, this is a personal interest of mine and professional interest of mine, not just personal. So I follow this up every year, and I have my staff follow it.

Last year, when you sat there, I asked you about the accomplishment of ODEP grant funding and your Department's response was, "46 States have adopted evidence-based policies and practices that ODEP has developed based on the findings of the grants that the agency has funded." Well, I would think based on that, that ODEP should fund more grants. So I am getting another story from you this year than what I got last year. I would think based on this, we ought to be doing more of that grant-making.

Secretary CHAO. Well, we are continuing with grants. It is just not as much as you would like.

Senator HARKIN. Well, yes, a 54 percent cut, I guess not.

Secretary CHAO. We gave approximately \$12 million.

Senator HARKIN. I mean, the overall cut in your budget—your overall cut was what? 7 percent?

Secretary CHAO. No, it was not a cut. It has always been—

Senator HARKIN. I mean overall.

Secretary CHAO. The President's budget has always been that way. It has always been at this level. Then the committee has put more in.

Senator HARKIN. I do not mean ODEP. I mean your entire budget request. Is it not down from last year?

Secretary CHAO. Primarily because—

Senator HARKIN. I thought you told me in your opening statement it was down.

Secretary CHAO. No, not in the worker protection areas. Basically it is in—ODEP—the President's request has always been the same. It is less than what the enacted was.

Senator HARKIN. I am just saying that your overall request is down a few percentage points from last year.

Secretary CHAO. That is primarily probably due to the overhang in ETA.

Senator HARKIN. Well, but anyway, 54 percent is illogical to be cutting from ODEP. It is just not so. Now, again, that would eliminate all grant activity.

Again, Madam Secretary, I've got to read you the law, Public Law 106-1033. "Beginning in fiscal year 2001, there is established in the Department of Labor an Office of Disability Employment Policy which shall, under the overall direction of the Secretary, provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities. Such office shall be headed by an Assistant Secretary."

It did not say you may award grants. It says you shall. Now you have submitted a budget to me that says we will not award any grants, and from what I just heard you say, that is not a big deal

with ODEP. Grant-making is just not that important. Well, we put it in the law specifically for that.

That is why I asked you about it last year. I thought your answer last year was pretty good, you know, that 46 States have developed these things. I thought, well, that cries out for more grant activity to pursue these and to find out just what are the barriers. Why is it 70 percent? What are those barriers out there?

Anyway, I just want to tell you this is over the top on that 54 percent cut. I mean, we will have to put it back in, but I just do not think it represents the priorities that we ought to be doing when we are trying to help people get employment.

#### BUREAU OF INTERNATIONAL LABOR AFFAIRS

Now, there is one other area, as you know, that is an intense interest of mine. It is called international child labor.

Secretary CHAO. Right.

Senator HARKIN. You knew I was going to ask that question.

Well, here we go. As it has done each year under this administration, the Department's budget drastically reduces funding for the elimination of child labor worldwide. Your 2009 budget requests \$14.8 million for ILAB, a decrease of \$66.3 million, or—hang on to your hats—82 percent decrease in funding. 82 percent. Why did you not just zero it out?

The 2009 budget proposal will set back efforts to continue the positive progress. According to your own Department, this program has resulted in almost 230,000 children prevented or withdrawn from child labor and provided education opportunities just in 2007. That is pretty good. So, again, cut it by 82 percent.

You and I have disagreed on this before. You cut the budget and we have to fight to get it in. You have often said that one of the reasons the funding is eliminated is the Bush administration believes grant-making should not be a part of ILAB's mission. Is that still your position?

Secretary CHAO. I think we are going to have a disagreement about this. Every year we go through this, and I am sorry to be here to say the same thing again. But we really do disagree on the mission of ODEP and on the mission of ILAB. We believe that ILAB should go back to its core functions, and our budget request every year has been the same. So it has not been a cut from the budget request point of view.

Senator HARKIN. Madam Secretary, here is a book I just got handed to me the other day. It is the Honor Awards, the 95th Anniversary Celebration, Wednesday, April 30, the United States Department of Labor Honor Awards. Secretary's Exceptional Achievement Award, in recognition of individual employees and groups of employees who have achieved an unusually significant work product that fosters one or more of the Department's strategic goals. The first one was Employment Standards Administration.

Here we are, next page. Bureau of International Labor Affairs, ILAB. Here it is right here. Office of Child Labor, Forced Labor, and Human Trafficking Team. In recognition of outstanding commitment and dedication to the implementation of a high quality program that has enabled more than 1 million children in over 75

countries to be removed or prevented from exploitive labor and provided with educational and training opportunities.

That is what the grants do. This is not reporting. This is not a report. This is what ILAB has done, and you said it yourself and you gave them an exceptional award. So I am having a hard time getting my head around this one. You honor this team, ILAB, for what they have done, and now you tell me that you do not agree with this mission.

Secretary CHAO. We do not, but since the money has been given to us, we do have a responsibility to be good stewards of the taxpayers' dollars, which is why when this money was given, we are going to do the best we can with it, and this team did a good job.

Senator HARKIN. Well, I just wonder. I was in Ghana earlier this year too, and I noticed you here at the primary school outside Accra. We went out and looked at some child labor things in the cocoa fields and stuff in both Ghana and the Ivory Coast. Here is a nice picture of you with all these kids who have been taken away from forced labor and exploitative labor. I bet you were proud to stand there with them, were you not?

Secretary CHAO. Well, I have an interest in child labor and I went to visit a lot of child labor sites.

Senator HARKIN. I bet you were proud to stand there with them.

Secretary CHAO. I was very proud of that.

Senator HARKIN. To see those happy faces, no more exploitation, they are in schools, and ILAB had a big part to do with it.

Now you come up here and say we should not have that mission? Now, Madam Secretary, have you told these people that you are going to request that we are going to cut them by 82 percent?

Secretary CHAO. We are not the only ones doing this work, and as I mentioned, we are going to have a disagreement about this.

Senator HARKIN. I know you are not the only one, but you do a big part of it. I am just saying, have you told all these people you are going to request, when you see them over there—I am going to cut your budget by 82 percent? Because what I keep hearing from them is are we going to be able to do our job. Are we going to be able to continue to do the good work that we do in a lot of places around the world?

So I have a hard time understanding why you say this should not be a mission, and yet you seem to be quite proud of the work they do. You ought to be proud of it. They do a great job. They are doing a great job.

As long as I am here, we are going to make sure we fund them. But this idea of cutting them 82 percent—budgets represent priorities. So when I see you cutting this 82 percent, I've got to believe this is on the bottom rung.

Secretary CHAO. We have always had a disagreement about this.

Senator HARKIN. So you do not think we should be doing this.

Secretary CHAO. No. It is our position that we should not be doing it through ILAB. It should be done through some other agency. We have not cut this budget.

Senator HARKIN. What agency should it be done through?

Secretary CHAO. There are many other Departments within the Federal Government. We have not cut this budget. We have consistently been very steady in asking for \$12 million for ILAB every

single year, and we get more than that. If we do get more, of course, we are going to be responsible and try to do a good job with it.

Senator HARKIN. Well, I do not know. Again, it just represents to me a low priority, very low, and I think it ought to be a very high priority. You say, well, it could be done in other areas. Well, there are a lot of things that could be done in some other Department. With all due respect, Madam Secretary, I just do not think that is really a legitimate response on that, to say somebody else can do it. The fact is it is in your Department. It does good work. You recommend it with an outstanding service award.

I would think you would tell your boss down there at the White House that this is something that gives us pride as Americans. It is one of the best things we do in some of these countries to help get these kids out. Maybe the President does not even know about it. He probably does not even know about it. I do not know. He has got a lot on his plate, but it would seem to me this would be a source of pride, which I think represents that picture you took. It looks like you are pretty proud of that.

All right, moving right along. I wanted to also cover just a couple of other things.

#### OSHA SAFETY AND HEALTH REGULATIONS

Labor-management reporting. I mentioned in my statement this is one area that got an increase. I have been looking at this OSHA thing seeing what has happened over the last few years. Do you realize, Madam Secretary, that during the entire tenure that you have been there, OSHA has issued only three significant safety and health regulations, two of which were issued as a result of court orders or lawsuits? In all these years, only one that you have issued that was not demanded by a court order or a lawsuit.

Let me read for you what happened in the—well, I have got the three here. 2006, one in 2007, and another one in 2007. One was court ordered. One was in response to a lawsuit. Here is what the Clinton administration did, 18. You have got one.

Now, lest you think this is just some kind of Democrat-Republican thing, how about if I read you the Bush I administration, which was only 4 years? Bush I, 17. That is for 4 years.

Let us look at what President Reagan did in his two terms, 20. You have issued one.

Well, that indicates to me that you are just not doing much with OSHA in safety and health regulations. I do not know what your response might be to that. Why is it just one, when I go back over the last administrations and find it is pretty consistent? It is 20, 18, 15.

Secretary CHAO. I am a little bit surprised at that number. I do not know where it came from. OSHA has completed 23 final regulatory actions since 2001. We have had the lowest injury and illness rate ever in the history of this country. We have had the lowest fatality rate ever in this country. Let us look at results. We have also issued the most violations since 1994. So I am a bit puzzled also as to what that number comes from.

Senator HARKIN. I am told that those 23 do not represent significant safety and health. These are very minor little things. I did not

include those in the Clinton and Bush. I will go back and get those too. We will probably be up around 50 in each one of them. So that is what I am talking about.

Secretary CHAO. We issued 23 regulations. That seems a lot already.

Senator HARKIN. What?

Secretary CHAO. 23 regulations since 2001.

Senator HARKIN. 23?

Secretary CHAO. Yes.

Senator HARKIN. Would you give those to us so we can see how significant they are?

Secretary CHAO. Sure.

[The information follows:]

#### OSHA'S 23 FINAL REGULATORY ACTIONS SINCE 2001

(TITLE, PUBLICATION DATE, FEDERAL REGISTER CITATION)

1. Recordkeeping (Interim Guidance Hearing Loss & MSDs) (Regulation) (10/12/2001; 66:52031)

OSHA delayed implementation of provisions for recording occupational hearing loss and musculoskeletal disorders published in its January 19, 2001, revised recordkeeping regulation. This delay provided OSHA the opportunity to gather further public comment and to re-evaluate the recording criteria for these specific conditions.

2. Recordkeeping Final Provisions Hearing Loss (Regulation) (07/01/2002; 67:44037)

OSHA published specific criteria for recording occupational hearing loss on the OSHA Form 300. These criteria are set forth in 29 CFR 1904.10. The recording criteria are a modification of the criteria published in OSHA's January 19, 2001, recordkeeping revision and are based on public comment solicited after the 2001 rule-making.

3. Occupational S&H Standards for Shipyard Employment (Technical Amendments) (07/03/2002; 67:445336)

OSHA published technical amendments to its Shipyard Employment standards. This document corrected general errors, as well as several inaccurate cross-references in these standards.

4. Signs Signals & Barricades (Direct Final) (04/15/2002; 67:18091)

The direct final rule amended construction standards to require that traffic control signs, signals, barricades, or devices protecting construction workers conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD). By ensuring conformity on signs and signals, this rule will alleviate confusion among workers as well as the traveling public regarding hazards during road and highway construction.

5. Update & Revisions on Exit Routes (11/07/2002; 67:67949)

The Agency revised the means of egress standards clarifying existing requirements so they will be easier to understand by employers, employees, and others who use them.

6. Recordkeeping (Regulation) (Removal of MSD Provisions) (06/30/2003; 68:38601)

The final rule deleted two provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule published January 19, 2001. These provisions required employers to check the MSD column on the OSHA 300 Log if an employee experienced a work-related musculoskeletal disorder (MSD), and stated that MSDs are not considered privacy concern cases.

7. Commercial Diving Operations: Revision (02/17/2004; 69:7351)

OSHA issued this final rule to amend its Commercial Diving Operations (CDO) standards. This final rule allows employers of recreational diving instructors and



diving guides to comply with an alternative set of requirements instead of the decompression-chamber requirements in the current CDO standards. This rule recognizes advances in technology of diving equipment and provides greater flexibility.

8. Controlled Negative Pressure Fit Testing Protocol: Amendment to the Final Rule on Respiratory Protection (08/04/2004; 69:46986)

OSHA approved an additional quantitative fit testing protocol, the controlled negative pressure (CNP) fit testing protocol, for inclusion in Appendix A of its Respiratory Protection Standard. Proper fit is essential to the effectiveness of respirators in protecting against respiratory disease hazards.

9. Fire Protection in Shipyard Employment (Part 1915, Subpart P) (09/15/2004; 69:55667)

OSHA promulgated a fire protection standard for shipyard employment that provides increased protection for shipyard workers from the hazards of fire on vessels and vessel sections and at land-side facilities. The Standard affects 669 employers and 98,000 employees. It is estimated that 1 death and 292 injuries (102 lost workdays/190 non-lost workdays) will be averted annually.

10. Standards Improvement Project—Phase II (01/05/2005; 70:1111)

The final rule removed and revised provisions of its standards that were outdated, duplicative, unnecessary, or inconsistent. The Agency estimated that the final standard would result in total annual cost savings of \$6.8 million annually with no adverse effect on employee safety or health.

11. Procedure for Handling Discrimination Complaints under Section 6 of Pipeline Safety Improvement Act of 2002 (04/08/2005; 70:17889)

This document provided the final text of regulations governing the employee protection (“whistleblower”) provisions of Section 6 of the Pipeline Safety Improvement Act of 2002 (“Pipeline Safety Act”), enacted into law December 17, 2002.

12. Oregon State Plans: Notice of Final Approval Determination (05/12/2005; 70:24947)

OSHA granted final approval under Section 18(e) of the Act to the Oregon State Plan, reflecting a determination that the State plan was at least as effective as Federal OSHA in structure and in actual operation. Concurrent Federal enforcement jurisdiction was relinquished in the State, and Federal OSHA standards no longer apply except with regard to those specific issues not covered by the State plan, e.g., Federal agencies, U.S. Postal Service, private contractors on military bases, maritime employment, etc.

13. Updating OSHA Standard Based on National Consensus Standards (12/14/2007; 72:71061)

The direct final rule removed several references to consensus standards that have requirements that duplicate, or are comparable to, other OSHA rules, and corrected a paragraph citation in one of these OSHA rules. The Agency also removed a reference to American Welding Society standard A3.0–1969 (“Terms and Definitions”) in its general-industry welding standards.

14. Rollover Protective Structures (12/29/2005; 70:76979)

In 1996, OSHA replaced the existing roll-over protective structures (ROPS) standards that regulate the testing of ROPS used on tractors with references to the source consensus standards from which they were developed. Subsequently, OSHA identified several substantive differences between the national consensus standards and the original ROPS standards. The Agency reinstated the original ROPS standards by issuing a direct final rule that also contained a number of minor revisions that improve comprehension of, and compliance with the ROPS standard. Clarity will assist employers in complying with the standards.

15. Steel Erection: Slippery Surfaces (Revocation of Requirement for Slippery Surfaces) (01/18/2006; 71:2879)

This document revoked a provision within the Steel Erection Standard which addresses slip resistance of skeletal structural steel. The provision was revoked because it was determined that insufficient progress had been made in developing coatings and surface testing methods for meeting the requirement. As a result of the revocation of this provision, the projected \$29.5 million annualized costs for affected establishments that were anticipated in the economic analysis for the final rule of Subpart R will not be incurred.

16. Occupational Exposure to Hexavalent Chromium (02/28/2006; 71:10099)

OSHA amended the existing standard which limits occupational exposure to hexavalent chromium (Cr(VI)). This Standard reduced OSHA's existing permissible exposure limit and added requirements for exposure monitoring, medical surveillance and other protective measures. An estimated 1,782 to 6,546 lung cancer cases would be prevented over the lifetime of the current worker population.

17. Occupational Safety & Health of Contractor Employees at Certain DOE Sites (06/29/2006; 71:36988)

This notice clarifies jurisdiction and enforcement responsibilities of OSHA and 14 of its approved State Plans at various Department of Energy sites which are not subject to the Atomic Energy Act. OSHA's regulations in 29 CFR 1952 are amended to reflect this jurisdiction, as appropriate.

18. New York State Plan for Public Employees Only (08/16/2006; 71:47081)

In this final rule, OSHA approved revisions to the New York State Plan for Public Employees Only and certified that the plan was structurally complete and had met all of its developmental commitments.

19. Assigned Protection Factors (08/24/2006; 71:50121)

OSHA revised the Respiratory Protection Standard to add definitions and requirements for Assigned Protection Factors (APFs) and Maximum Use Concentrations (MUCs). The revisions supersede the respirator selection provisions of existing substance-specific standards with these new APFs (except for the respirator selection provisions of the 1,3-Butadiene Standard). The APF rule helps ensure that the benefits from the 1998 revision of the Respiratory Protection Standard are fully achieved. OSHA estimated that the 1998 revised Respiratory Protection Standard would avert between 843 and 9,282 work-related injuries and illnesses annually, with a best estimate (expected value) of 4,046 averted illnesses and injuries annually, and would prevent between 351 and 1,626 deaths annually from cancer and many other chronic diseases, including cardiovascular disease, with a best estimate (expected value) of 932 averted deaths from these causes.

20. Updating National Consensus Standards in OSHA's Standard For Fire Protection in Shipyards (Direct Final) (10/17/2006; 71:60843)

In this direct final rule, OSHA replaced the references to 11 National Fire Protection Association standards by adding the most recent versions. No adverse comments were received and the Direct Final Rule became effective on January 16, 2007.

21. Occupational Exposure to Hexavalent Chromium [Amendment to General Industry Standard for SFIC Settlement] (10/30/2006; 71:63238)

OSHA amended its final rule governing occupational exposure to hexavalent chromium in general industry. This amendment implements a settlement agreement (Agreement) entered into among OSHA, the Surface Finishing Industry Council (SFIC), Public Citizen Health Research Group (HRG), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, and the Allied Industrial and Service Workers International Union (Steelworkers).

22. Subpart S Electrical Standard (02/14/2007; 72:7135)

The Final rule revises the general industry electrical installation standard found in Subpart S of 29 CFR Part 1910. This rule focuses on safety in the design and installation of electric equipment, which poses a significant risk of injury or death in the workplace. This revision updates the standard and is based primarily on the 2000 edition of National Fire Protection Association's national consensus standard for Electrical Safety Requirements for Employee Workplaces (NFPA 70E). The final rule is expected to prevent one to two fatalities per year.

23. Employer Payment for Personal Protective Equipment (11/15/2007; 72:64341)

This final rule requires employers to pay for the PPE provided, with exceptions for specific items. The rule does not require employers to provide PPE where none has been required before. Instead, the rule merely stipulates that the employer must pay for required PPE, except in the limited cases specified in the standard. OSHA estimates that the rule will prevent about 21,800 injuries and approximately two deaths annually.

Senator HARKIN. Because I am told they are not. I am told that these do not rise to the level of a significant OSHA safety or health regulation.

Secretary CHAO. But let us take a look at the results. We have had the best injury and illness rate, the lowest fatality rate. We have issued the most regulations. That is what really matters, the overall health and safety record. Have we really helped the workforce become safer, healthier?

Senator HARKIN. I am going to go back to your statement here. Just a second here. I want to challenge you a little bit on this. I am going to find out why we have a little difference here.

You said, "Since 2001, the workplace fatality and serious injury and illness rates have fallen to record lows." They have declined by 17 percent.

#### HISPANIC WORKER FATALITIES

Here is another thing. "Perhaps most notable," your testimony says, "is the reduction in the fatality rate among Hispanic workers, which has declined by 17 percent since 2001." That is in your statement.

Here is the Department of Labor, Bureau of Labor Statistics, which you just get off your Web site. "Question: How many Hispanic workers have been fatally injured on the job?" This is from your Web site. "In 2006, 990 Hispanic workers were fatally injured while at work, a new series high."

Secretary CHAO. It is the absolute number. We are talking about the percentages. Our workforce increases by about 1 million workers every year. So our workforce continues to increase, which is why the absolute numbers will increase. But the percentage has decreased.

Senator HARKIN. This figure represents a 7 percent increase from the 923 fatalities reported in 2005. The fatality rate also increased from 4.9 to 5.0. Hispanic worker fatalities accounted for 17 percent of the total fatal work injuries that occurred in the United States in 2006. The rate of 5 fatalities per 100,000 workers recorded for Hispanic workers was a 25 percent higher rate than the rate of 4 fatalities per 100,000 recorded for all workers. Let me just finish this. While fatal work injuries to Hispanic workers increased in 2004, 2005, 2006, they decreased in 2002 and 2003, but then they shot up.

So you say the reduction in fatality rate among Hispanic workers has declined by 17 percent. Yet, your own thing says, no, it has increased.

Secretary CHAO. That was a 1-year result, and even though the up-tick occurred last year, the rate is still the lowest ever.

Senator HARKIN. The rate.

Secretary CHAO. Yes.

Senator HARKIN. The rate—

Secretary CHAO. Of the total workforce.

Senator HARKIN. The rate of fatalities among Hispanic workers as compared to the entire workforce in America is at the lowest point ever. Is that what you are saying?

Secretary CHAO. Yes. You are talking about the changes—

Senator HARKIN. Well, here the fatality rate is—

Secretary CHAO [continuing]. Which is what the increases or the decreases per year is. But if you look at the whole workforce, the rate is still the lowest.

Senator HARKIN. Well, let me read this again. The rate of 5 fatalities per 100,000 workers—that is all workers—recorded for Hispanic workers was a 25 percent higher rate than the rate of 4 fatalities per 100,000 workers recorded for all workers.

Secretary CHAO. You are talking about the changes. You need to take a look at the whole workforce.

Senator HARKIN. Well, I am looking. When I see that 990 Hispanics workers are fatally injured and it is a new series high and it represents a 7 percent increase, I do not care about the total workforce. You were talking about Hispanic workers.

Secretary CHAO. No.

Senator HARKIN. If I were to read that sentence, Madam Secretary, I would say, “oh, it just declined by 17 percent. Boy, that is pretty good news.” But I read this.

Secretary CHAO. Over a 7-year period, yes.

Senator HARKIN. That is not true. It is not true.

Secretary CHAO. It is true.

Senator HARKIN. Has declined by 17 percent of what?

Secretary CHAO. The OSHA injury and illness rate is down by 17 percent between 2002 and 2006. The fatality rate is down 7 percent between 2001 and 2006.

Senator HARKIN. For Hispanic workers.

Secretary CHAO. The Hispanic fatality rate is down by 16.7 percent. If you took the 2001 number, take a look at 2006, it is a 16.7 percent decrease. OSHA inspections in fiscal year 2007 are up by 7.6 percent.

Senator HARKIN. Well, Madam Secretary, please send that up to me because I would like to take a look at that because that is not what this says. Now, I do not know what you are talking about. All I can do is read what the plain English is on your Web site, and I will say one more time, 2006, 990 Hispanic workers fatally injured while at work, a new series high. It is a 7 percent increase reported in 2005. Per 100,000 workers, the rate of 5—

Secretary CHAO. It is the change.

Senator HARKIN [continuing]. Is 25 percent higher than before.

Secretary CHAO. You are talking about the change per year. You are talking about the change per year. We are talking about the rate overall.

Senator HARKIN. Oh, from 2001 to 2007.

Secretary CHAO. No. The rate of the whole workforce. You are talking about the changes from one year to the next.

Senator HARKIN. No. I am just talking about Hispanic workers.

Secretary CHAO. Yes, I understand that.

Senator HARKIN. You say that the fatality rate has gone down by 17 percent. 17 percent of Hispanic workers?

Secretary CHAO. Between 2001 and 2006.

Senator HARKIN. Of all Hispanic workers—

Secretary CHAO. Hispanic fatality rate, right.

Senator HARKIN. Has gone down by 17 percent.

Secretary CHAO. 16.7, yes.

Senator HARKIN. Well, I am sorry, Madam Secretary. You better change your Web site because that is not what that says. That is not what that says. I just read it. Unless I forgot my English, I mean, it just does not say that. They said here, while it decreased

in 2002 and 2003, it has gone back up in 2004 and 2005 and 2006. I guess we do not have it for 2007. The rate for Hispanics is 25 percent higher. That is for one year, but it is higher than it was in 2002 also. I am just reading from this. So maybe you need to correct your sheet here. I do not know.

Secretary CHAO. We will take a look.

[The information follows:]

Secretary Chao's testimony cited the decline in the rate of Hispanic fatalities, the number of Hispanic fatalities divided by Hispanic employment, which has fallen by 16.7 percent from 6 per 100,000 Hispanic workers in 2001 to 5.0 in 2006.

Senator Harkin cited the count of Hispanic fatalities, which, at 990 in 2006, was a series high. Because Hispanic employment has grown substantially since 2001, this count does not lead to an increase in the rate of fatal work injuries to Hispanic workers.

Also, Senator Harkin correctly noted that the Hispanic fatality rate in 2006 (5 per 100,000 workers) is 25 percent higher than that of all workers (4 fatalities per 100,000).

Below are the numbers and rates of Hispanic worker fatalities and the fatality rate for all workers from 2001–2006:

| Year       | Hispanic worker fatalities |                   | All worker fatalities rate <sup>1</sup> |
|------------|----------------------------|-------------------|---|
|            | Number                     | Rate <sup>1</sup> |   |
| 2001 ..... | 895                        | 6.0               | 4.3                                     |
| 2002 ..... | 841                        | 5.0               | 4.0                                     |
| 2003 ..... | 794                        | 4.5               | 4.0                                     |
| 2004 ..... | 902                        | 5.0               | 4.1                                     |
| 2005 ..... | 923                        | 4.9               | 4.0                                     |
| 2006 ..... | 990                        | 5.0               | 4.0                                     |

<sup>1</sup> Rate reflects the number of fatalities per 100,000 workers.

Senator HARKIN. I see our distinguished Senator from Washington is here, and I will yield to her for any statement or questions. Senator MURRAY?

Senator MURRAY. Well, thank you very much, Mr. Chairman, and welcome, Secretary Chao. I am sorry I am late. I have several committee hearings going on today.

#### HIGH GROWTH JOB TRAINING INITIATIVE

But I wanted to come and chat with you because in your testimony today and previously before this subcommittee, I have heard you speak about the Department's five critical priorities in budget and policy planning. One of those is—and I quote—"increasing the competitiveness of America's workforce."

I have also heard you and many other administration officials talk about your agency's efforts to support the President's "results-driven agenda."

Now, to me, "results" implies being able to measure the impact and effectiveness of programs that are supported by your Department. So today I was pretty disappointed that the GAO report released today finds that for almost \$900 million spent under the President's demand-driven workforce agenda, your agency has failed to establish any kind of benchmarks that would allow you to adequately monitor whether any of these grants met the statutory requirements that they were awarded under or allow you to measure the performance of the programs that received this funding.

Now, I initiated this report, along with Senator Harkin and Senator Kennedy, after we learned that the Employment and Training

Administration awarded 90 percent of its high growth dollars non-competitively over the last 6 years.

I find the GAO's findings particularly troubling given that the agency intended to use these grants to shift the focus of our Nation's workforce development system, but because there has been very little planning by your agency on the front end, it is impossible now to compare these initiatives to the other programs under the Workforce Investment Act.

It means that providing that your initiatives are more successful in "increasing the competitiveness of America's workforce" is really out of the question. In fact, GAO found that the Department failed to even integrate these initiatives fully under its strategic plan. Now, in my opinion, that fails to live up to a results-driven agenda.

So given the findings of this GAO investigation and the Inspector General's audit that I believe Senator Harkin talked about in the High Growth grants, I think everyone on this subcommittee is eager to hear how you plan to demonstrate the effectiveness of the President's demand-driven job training program today.

Reference reports: Dept. of Labor IG—Office of Audit, Rep. Number: 02-08-204-03-390, released April 29, 2008. GAO Report Number GAO-08-486.

Can you tell us why we should continue to fund what seems like an effort to derail the Nation's workforce investment development system under WIA?

Secretary CHAO. I will be more than glad to. First of all, the GAO report was conveniently released this morning. We have not had a chance to review it.

Number two—

Senator MURRAY. Conveniently released?

Secretary CHAO. I do not have it.

The High Growth Job Training Initiative was designed to respond to, as you well know, a demand-driven system. Every year there are in excess of \$1 billion in unspent funds. There are duplicative structures within the system. That is an issue that the authorization committee has to take care of. But there is something called Employment Services and there is something called Workforce Investment Act. Much of the funding that goes on goes to Employment Services, which is a duplicative, side-by-side structure next to workforce investment. If we are really concerned about increasing the competitiveness of our workforce, there is a crying need to reform the system, and that is what we are trying to do.

Of the High Growth Job Training program, that is an effort to respond to the skills that are needed in our economy. As I mentioned before, if we are to have the trust and confidence of workers to come into our system seeking training, we need to give them relevant training, number one. Number two, we need to ensure that when they get the training, they actually can get a job when they leave. They demand no less. We can do no less.

Senator MURRAY. Will you give us your commitment that you will look at this GAO report as soon as possible?

Secretary CHAO. Sure.

Senator MURRAY. Will you implement its recommendations?

Secretary CHAO. I need to see what it is, but sure.

Senator MURRAY. Well, we expect you to do that, and I am certain the committee would like to hear back about that.

#### WIA CONSOLIDATION

I am concerned about the consolidation of the WIA funding streams for adult dislocated workers and youth. Obviously, that is something you continue to push. Even though your proposals have been rebutted by Congress on a bipartisan basis here, we have seen a continual decline in dollars in training and employment. This is a time when the economy is really hurting. Our constituents are asking how can we get the employment and training we need. We have seen proposals to eliminate employment services by zeroing out the \$703 million that we have available for State grants. So line item after line item, we are seeing a continued decline in dollars here, yet people are very worried about holding on to their jobs. Does that not concern you?

Secretary CHAO. Of course, it concerns me. It concerns me that there are such duplication and excess funds in this system that is not helping people get the training that they need.

Senator MURRAY. Give me a specific.

Secretary CHAO. We have \$863 million, something like that, in unspent funds in the system.

Senator MURRAY. Why is that? Is it being held back?

Secretary CHAO. We have duplicative systems. If we visit the workforce investment system, on the one side of the building is employment services. On the other side is workforce investment. They should be combined so that workers can get the training that they need. Currently that is not happening, and we are training people for jobs that do not exist. That is terrible.

Senator MURRAY. That is exactly why under WIA we think the Workforce Development Councils at the local level who know their own local communities better than any of us here in Washington, DC—

Secretary CHAO. But they are separate from—

Senator MURRAY. Well, we have a difference of philosophy that is not going to be solved in the next several months.

I came in when the chairman was asking you about the workplace injuries and illnesses, and this is something that we have had a number of OSHA oversight hearings in my Employment Workforce Safety Subcommittee, when Dr. David Michaels testified recently. He told us that the true incidence—and I am quoting him—“is far higher than reported by the Bureau of Labor Statistics since these data do not include approximately two-thirds of occupational injuries and illnesses.”

In all of our oversight hearings, it became very clear that the under-reporting of workplace injuries and illnesses is a serious issue today. Is this something you are hearing about or you are concerned about—under-reporting?

Secretary CHAO. I do not believe there is under-reporting, but if you are concerned about it, I will take a look at it.

Senator MURRAY. This is something that our committee looked extensively at. It is very clear that there is under-reporting throughout the process. We will give you some of our hearing back-

grounds because I think it may change your view on whether or not there is a decreased number of injuries.

Mr. Chairman, I have several other questions I will submit for the record, but I appreciate the opportunity this morning. Thank you, Madam Secretary.

Secretary CHAO. Thank you.

Senator HARKIN. Thank you, Senator.

#### WIA RESCISSIONS

I would just follow up a little bit on that, Madam Secretary. Of the 20 States that responded, 19 reported they needed waivers so they could cover the rescissions with fiscal years 2007 and 2008 funds. In other words, they did not have enough 2005 and 2006 funds left that could be used to cover the rescission. We went through this last year.

Secretary CHAO. We did not ask for the rescission. It was the Congress.

Senator HARKIN. No.

Secretary CHAO. I take it back. I am sorry.

Senator HARKIN. Yes. You asked for \$335 million and we did—well, let me get the right figure here. Yes, we did \$250 million. You asked for \$335 million.

Secretary CHAO. So the question was—

Senator HARKIN. Well, I am just pointing out that the States did not have enough funds. I just thought I heard you say that there is all this leftover money out there. Did I hear that?

Secretary CHAO. Yes.

Senator HARKIN. Yes. Well, the data we have does not show that there is all that leftover money. Of 20 States that responded, 19 said they needed waivers.

Secretary CHAO. Okay. I will take a look at that.

[The information follows:]

As indicated in the attached table, a total of 47 States (including the District of Columbia and the Navaho Nation) have requested approval to use Program Year (PY) 2007 funds to satisfy the rescissions. The appropriations language specifically allows the Secretary to grant such approval. However, the appropriations language does not contain any authority for the Secretary to grant a waiver enabling a State to pay back money due to the rescission from a subsequent program year (i.e., PY 2008). Therefore, a waiver allowing the use of Program Year 2008 or other future funds cannot be granted and no States have made such a request. Additionally, the State of Tennessee has requested a separate waiver in response to the rescissions that will provide greater flexibility in the recapture and reallocation of local funds. This waiver does not contradict any of the requirements contained within the rescissions and is regularly granted under the Workforce Investment Act.

#### DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION \$250 MILLION RESCISSION OF UNEXPENDED BALANCES DISTRIBUTION OF RESCISSION BY FUNDING YEAR AS REQUESTED BY THE STATES

| State            | Funding year |           |            | Requested waiver<br>to use PY 2007<br>funds |
|------------------|--------------|-----------|------------|---|
|                  | PY 2005      | PY 2006   | PY 2007    |   |
| ALASKA .....     | 645,570      | 752,251   | .....      | N   |
| ALABAMA .....    | 864,407      | 876,360   | 1,118,950  | Y   |
| ARKANSAS .....   | .....        | 1,308,786 | 2,915,426  | Y   |
| ARIZONA .....    | 74,501       | 3,512,795 | 5,891,464  | Y   |
| CALIFORNIA ..... | 262,937      | 1,501,341 | 11,790,901 | Y   |
| COLORADO .....   | 51,160       | 3,569,938 | 5,144,692  | Y   |



| State                | Funding year |            |             | Requested waiver<br>to use PY 2007<br>funds |
|----------------------|--------------|------------|-------------|---|
|                      | PY 2005      | PY 2006    | PY 2007     |   |
| CONNECTICUT .....    |              |            | 669,896     | Y   |
| DC .....             |              |            | 2,292,101   | Y   |
| DELAWARE .....       |              | 378,486    | 58,289      | Y   |
| FLORIDA .....        | 1,659,910    | 2,099,438  | 6,833,750   | Y   |
| GEORGIA .....        |              | 7,183,495  | 2,250,192   | Y   |
| HAWAII .....         |              |            | 239,536     | Y   |
| IOWA .....           |              | 286,198    | 993,132     | Y   |
| IDAHO .....          |              |            | 210,683     | Y   |
| ILLINOIS .....       | 1,220,530    | 5,203,752  | 1,751,880   | Y   |
| INDIANA .....        | 6,876,594    | 4,093,268  |             | N   |
| KANSAS .....         |              | 751,532    | 4,896,619   | Y   |
| KENTUCKY .....       | 82,357       | 135,469    | 2,290,279   | Y   |
| LOUISIANA .....      |              |            | 4,426,629   | Y   |
| MASSACHUSETTS .....  | 393,273      | 789,873    | 431,815     | Y   |
| MARYLAND .....       |              |            | 2,087,739   | Y   |
| MAINE .....          |              | 220,066    | 40,068      | Y   |
| MICHIGAN .....       | 216,223      | 123,913    | 5,213,936   | Y   |
| MINNESOTA .....      |              | 573,853    | 294,427     | Y   |
| MISSOURI .....       |              |            | 1,503,748   | Y   |
| MISSISSIPPI .....    | 30,677       | 1,912,858  | 1,407,583   | Y   |
| MONTANA .....        |              | 189,376    |             | N   |
| NORTH CAROLINA ..... | 1,561,572    |            | 1,308,565   | Y   |
| NORTH DAKOTA .....   | 238,238      |            | 147,895     | Y   |
| NEBRASKA .....       | 437,191      | 1,154,684  | 759,836     | Y   |
| NEW HAMPSHIRE .....  |              | 216,222    | 145,238     | Y   |
| NEW JERSEY .....     |              |            | 2,393,715   | Y   |
| NEW MEXICO .....     | 132,350      | 1,489,196  | 1,185,327   | Y   |
| NEVADA .....         |              |            | 390,190     | Y   |
| NEW YORK .....       | 20,657,557   | 9,954,817  | 7,053,353   | Y   |
| OHIO .....           | 2,500,000    | 10,557,343 | 6,725,717   | Y   |
| OKLAHOMA .....       | 822,272      | 5,221,830  | 4,213,712   | Y   |
| OREGON .....         | 674,514      | 1,925,147  | 2,231,011   | Y   |
| PENNSYLVANIA .....   |              |            | 4,434,297   | Y   |
| PUERTO RICO .....    | 3,170,099    | 6,581,296  |             | N   |
| RHODE ISLAND .....   |              |            | 314,971     | Y   |
| SOUTH CAROLINA ..... |              |            | 5,637,141   | Y   |
| SOUTH DAKOTA .....   |              | 555,825    | 362,605     | Y   |
| TENNESSEE .....      | 661,037      | 5,153,561  | 4,508,974   | Y   |
| TEXAS .....          | 5,782,445    | 3,635,845  |             | N   |
| UTAH .....           |              | 1,884,533  |             | N   |
| VIRGINIA .....       | 1,279,747    | 2,510,039  | 868,365     | Y   |
| VERMONT .....        |              |            | 141,574     | Y   |
| WASHINGTON .....     |              |            | 2,651,487   | Y   |
| WISCONSIN .....      |              |            | 583,404     | Y   |
| WEST VIRGINIA .....  |              |            | 476,806     | Y   |
| WYOMING .....        |              | 78,180     | 184,289     | Y   |
| NAVAHO NATION .....  | 73,492       |            | 1,777,574   | Y   |
| Total .....          | 50,368,654   | 86,381,565 | 113,249,781 |   |

Senator HARKIN. Okay.

#### WORKERS COMPENSATION DATA

Madam Secretary, I want to cover a couple of other issues with you. One is this. Your whole statement about the fact that injuries are down and fatalities are down. Serious injury and illness rates have fallen to record lows, et cetera. I went over the Hispanic thing with you. I will not go back over that. Just the totality of it, and we are finding some really disturbing information here.

I will just read this again. This is from your own Web site. "While BLS occupational injury and illness data have been the sub-

ject of scrutiny from time to time, a study released in early 2006 is the first specific research documenting missing cases in individual firms as determined by comparisons between BLS and State workers compensation data.”

Well, I have asked my staff to take a closer look at this. It looks like what we have here is under-reporting. So how do we know that what you are telling us is so when your own BLS says that the first specific research documented missing cases out there? So how do we know that these figures are even remotely correct when BLS says that there are missing cases out there documented that they picked up?

In other words, what they did is they went to State workman's comp offices, looked at people who had got workman's comp for an injury, looked at the injury data from that place back to your Department and said they were not reported. They were injured or had serious illness—I do not know which—were receiving workman's comp but were not reported. This is very disturbing that we do not know. That way we do not have the accurate data.

Secretary CHAO. OSHA conducts audit programs for these. They do audits of all these programs, and OSHA has conducted these audit programs for about the last 10 years. They believe that the accuracy rate is about 90 percent.

Senator HARKIN. Well, the Bureau of Labor Statistics is saying that they have got missing cases that they documented. So if OSHA is out there doing it, they are missing something. Something is being missed here. What I do not know is the extent of it. We do not know the extent of it. I intend to get to the bottom of it sometime either this year or next or something like that and find out. We may include language in this bill to find out. I may have to get the GAO to do another investigation. I do not know.

Secretary CHAO. We will be more than glad to work with you because OSHA basically checks the record keeping on every inspection that it does.

Senator HARKIN. If the BLS says they are not doing it right or they are missing something, then you have got to wonder about the validity of their data.

#### LM-30 REPORTING REQUIREMENTS

Now, as I said earlier, only three significant safety and health regulations were issued, and you are going to send me these other ones that you did so I can see what they look like.

In contrast, however, DOL has issued revised regulations for the LM-2 and the LM-30 reporting programs. Now, I have heard a lot about this. The new LM-30 reporting requirements force rank and file union members to report on personal loans even at market rates, such as a mortgage, student loan, or car loan. Because of these reporting requirements, unions are telling me that this has a dampening effect, discouraging members from serving even as a shop steward because then they have got to give all this data out, or they do not serve as board members.

Now anticipating that you might say, “Well, this has to do with ensuring there are no conflicts of interest,” these are loans that are offered to the general public. These are market rate loans, and yet you are requiring that data to be submitted.

So I am just wondering what is the purpose of having rank and file union members report on personal loans that they get at market rates, such as mortgages, student loans, car loans, et cetera, since these loans in question are on terms offered to the general public. What is the purpose of collecting that kind of data?

Secretary CHAO. You know, there is so little that we do in OLMS. We have only issued two regulations—not even issued. We have updated these regulations, LM-2, LM-30s. They have not been updated since 1959. The LM-30s are required by law, and there was very bad compliance. Until we focused on this, there was no compliance at all. I have no other laws within the Department of Labor in which there is no compliance. With LM-2s, it was 50 percent compliance within a 3-year period.

This is a very small office. The budget is only \$50 million in a budget of \$10.5 billion.

On the issue that you raise, if there is no conflict of interest, then there is no need to file.

Senator HARKIN. Well, I am told they have to file it if they have got a loan, if they have got a mortgage or they have got a student loan or a car loan. They still have to file that. Is that wrong?

Secretary CHAO. I will check into that for you. If there is no conflict of interest, then there is no need to file. The only purpose for this is to ensure that rank and file members know about non-arm's-length transactions occurring with the leadership of their unions.

Senator HARKIN. I have no problem with that. Well, maybe my information is wrong. I do not know. We will find out.

Secretary CHAO. If there is a misunderstanding, we need to clarify that.

Senator HARKIN. Will you have somebody find out for me if this is wrong or not?

Secretary CHAO. Sure.

[The information follows:]

Under the revised Form LM-30 rules, no report is due unless there is a potential conflict of interest. For this reason, there are different rules depending on whether the financial institution is affiliated, or does business, with the union.

Generally, a union official or employee filing a Form LM-30 need not report bona fide loans, interest or dividends from national or State banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, so long as these transactions are made on terms unrelated to the official's status in the labor organization.

However, union officials and employees must report such payments when the labor organization established, or selects the directors of, the financial institution. In this circumstance, there is a potential conflict of interest because of the potential for self dealing when a financial institution affiliated with a union is lending money, or making other payments, to an official of that union.

In addition, loans to union officials must be reported when made by financial institutions that do business with the union or union-affiliated organizations, or do substantial business with the employer of the union members. The potential conflict of interest is plain. Union members have a right to know if their union is doing business with a financial institution because it is offering the best terms available or because a union official is getting special deals from the institution.

Finally, there is never any requirement to report everyday financial matters such as credit card transactions (including unpaid balances) or interest and dividends paid on savings accounts, checking accounts or certificates of deposit.

Senator HARKIN. But I would just point out that on page 157 of your performance and accountability report, you say that OLMS—I quote—"met its target of 7.5 percent for the percentage of unions

with indicators of fraud. Private sector research indicates that this rate of fraud is significantly lower than fraud in corporations, which is estimated at 10 percent.” So, again, why do we keep increasing the money for that office when your own thing says it has met its target of 7.5 percent? Why keep asking for more money and for more people?

Secretary CHAO. In the 1980s, the compliance audits was about 1,500. By the year 2000, there were less than 204 international audits. There were international audits in fiscal year 2000 of two labor unions. Of the 33,000 labor organizations, only 3,000 have been audited since 2001. This is required by the law. The FTE in that little office was slashed more than 7—I do not want to say 7—my impression was 70 percent. We are just trying to build it up. In the late 1980s, the FTE was 435. We are currently at 321. It is still much below what it was then. In the decade of the 1990s, the FTEs were slashed. There are international unions that have never been audited.

Senator HARKIN. Again, your documentation here—this is from your performance and accountability report. I was intrigued by this because here on page 156 it talks about the union financial integrity and transparency. That is where we got the 7.5 percent.

Down here it says, “Percent of union reports meeting standards of acceptability.” Your target for fiscal year 2004 was 75 percent. The result, 92 percent. Your target for 2005 was 95 percent. The result was 94 percent. Fiscal year 2007 goal was 95 percent. I am sorry. The target was 97 percent. The result is 95 percent. So 95 percent of union reporting meeting standards of acceptability are 95 percent.

Secretary CHAO. That is great. That is how it should be. But you have to have audits.

Senator HARKIN. But now you are telling me—I thought I just heard you say that these were not acceptable reports and stuff that were coming in, and so you have to have more audits. I am saying no.

Secretary CHAO. We have to have audits.

Senator HARKIN. By your own thing—

Secretary CHAO. But that is our statutory responsibility. We have to conduct audits. We have not been conducting audits.

Senator HARKIN. When did you start?

Secretary CHAO. No, no. They have been going on, but it has been much reduced. In fiscal year 2001, for example, we did 220 audits.

Senator HARKIN. When?

Secretary CHAO. Fiscal year 2001, I believe. We did 220 audits. There were 110 indictments. That is an incredible number. What we are trying to do is to enforce the law.

Senator HARKIN. That was 2001?

Secretary CHAO. Yes. It was 2001. I do not have the exact, but it is around that time frame. Yes. I can get that for you.

[The information follows:]

OLMS audits, indictments and convictions for each year 2001–2007 are as follows:

|  | Fiscal year |      |       |      |      |      |      | Total |
|--|-------------|------|-------|------|------|------|------|-------|
|  | 2001        | 2002 | 2003  | 2004 | 2005 | 2006 | 2007 |       |
| Indictments .....                                | 99          | 166  | 131   | 110  | 115  | 121  | 100  | 842   |
| Convictions .....                                | 102         | 89   | 152   | 111  | 97   | 133  | 118  | 802   |
| Compliance Audits (CAP) .....                    | 238         | 277  | 255   | 532  | 612  | 737  | 775  | 3,426 |
| International Compliance Audits<br>(I-CAP) ..... | 1           | 2    | ..... | 1    | 7    | 5    | 7    | 23    |

Senator HARKIN. The figures you just gave me—there were 220—

Secretary CHAO. Audits done in fiscal year 2001.

Senator HARKIN. 110 indictments.

Secretary CHAO. Yes.

Senator HARKIN. Do you know what they were for subsequent years?

Secretary CHAO. I do not have that. That was just the first year. The Inspector General's Semi-Annual Report shows all of the activities in OLMS as does the OLMS Annual Report as well.

Senator HARKIN. Would you get me the same type of data, how many audits and how many indictments for every year?

Secretary CHAO. Yes. I thought I had that, but I do not.

Senator HARKIN. I just do not have it. All I have got is this right here.

Secretary CHAO. But again, we are just trying to enforce the law here and to ensure compliance. That is all.

#### LABOR-MANAGEMENT REPORTING

Senator HARKIN. Well, I guess my point is that—I remember one time a long time ago when we were having a debate on food stamp fraud and people were going on about all the fraud in food stamps and stuff. I made the point. I said there is a clear way to stop all fraud in food stamps or any other Government program like that. You just make sure that every recipient has an account assigned to them and a priest, rabbi, or minister. You will stop all the fraud. Of course, it will cost 10 quadrillion dollars to do it, but you will not have any fraud.

So, again, in all of these things, it has to do with what is the acceptable level, and if we are down to 7.5 percent in indicators, then it seems to me that to be adding more money and more money and requiring more reports does not seem to be cost effective.

Secretary CHAO. This is one of the least regulated areas in the whole Department. As I mentioned, there have only been two regulations, LM-2, LM-30s, and there has been very little compliance. With LM-2s, we can get you the numbers on that, and there has been a tremendous decrease in audits, tremendous increase in enforcement, tremendous decrease in compliance. It is not that we are singling out any one community. We are just trying to enforce the law, and the record for compliance in this area has been very disappointing.

Senator HARKIN. I come back to that point and you have only issued three in 8 years, three OSHA. But you are going to send me the other 23 too I guess and let me take a look at it.

Secretary CHAO. OSHA has a huge program. This is a little agency of \$50 million. It has a disproportionate level of attention. I do

not understand it. It is not that we are singling it out. It is a \$50 million little agency. All we are trying to do is enforce two regulations.

Senator HARKIN. Yes, but the LM-30s that you have issued, in terms of all this reporting—but you are going to tell me whether or not it is right that they have to report all these things.

Secretary CHAO. Yes, we will.

Senator HARKIN. I will find out about that.

Secretary CHAO. We have actually had workshops to try to clarify, not that it is so complicated, but what is requested. We have actually held workshops. But we will certainly provide that information.

Senator HARKIN. I would like to know whether I am right on that or not. I do not know.

#### MINE SAFETY AND HEALTH

In November 2007, the DOL Inspector General issued a report regarding missed safety and health inspections in underground coal mines. MSHA is required by law to inspect underground mines not fewer than four times a year. Here is what the IG found. During fiscal year 2006, 15 percent of the Nation's underground coal mines were inspected at least one time fewer than the four times required by law. Second, the number of inspectors relative to mining activity increased from fiscal year 1997 to 2001, but decreased significantly, 25 percent inspectors—decreased 25 percent from fiscal year 2002 to 2006. MSHA said inspector resource limitations affected their ability to complete all of the required inspections in fiscal year 2006, noting that lack of funding prevented MSHA from hiring or filling vacancies.

Again, it is priorities. You are asking more money for labor-management reporting, which I pointed out you said you have already met your goal of 7.5 percent, and yet you cut the funding from MSHA. Your request is \$332 million. It is a reduction of almost \$2 million from the amount provided in 2008. Congress had to provide MSHA with \$20 million more than your budget request last year to help MSHA meet its obligations. So, again, on the one hand, you are putting more money here, but you are taking money out of MSHA. I have to wonder about priorities here.

Secretary CHAO. The budget request for OLMS is the same this year as it was last year. Last year the Congress added \$936 million more to the President's request for worker protection, and yet it cut \$2 million from OLMS. We are just asking for the same amount of money in an effort to try to restore the funding and the functions of this office to pre-1991 levels.

On the issue of worker protection, we have consistently asked for increased budgets for worker protection programs throughout our whole tenure here. In 2008, MSHA's budget was not cut. There was a one-time expense to MSHA such as roof replacement for the MSHA academy, high methane detectors for inspectors. We have had earmarks of \$3.4 million, Wheeling Jesuit, \$1.2 million; UMW, \$2.2 million. We have had regulations for technical support equipment. These are one-time expenses. So if you take out the one-time expenses, our request this year is actually higher than the previous year.

Senator HARKIN. Okay. Is your budget request less than what we provided last year for MSHA?

Secretary CHAO. Yes, it is.

#### ERGONOMIC INJURIES

Senator HARKIN. Ergonomics. Again, this has been an issue that quite frankly, Madam Secretary, we just keep kicking the can down the road on ergonomics. As you know, that was the first thing I think that President Bush argued for after he took office.

One-third of all injuries—we were told, approximately one-third—and illnesses and days away from work are musculoskeletal disorders from exposure to ergonomic hazards on the job. In 2006, 375,540 serious ergonomic injuries resulting in time off the job reported by employers.

Getting back to issuing regulations, 375,540. Yet, no regulations.

In 2002 you, Madam Secretary, announced a comprehensive plan to address ergonomic injuries, including “industry-targeted guidelines and tough enforcement measures.” Those were your words. To quote you further, “Our goal is to help workers by reducing ergonomic injuries in the shortest possible timeframe.”

Well, let us see what has happened. OSHA has only issued 19 ergonomic citations since 2001, and there was one in 2005, none in 2006 or 2007. In 2006, there were 375,540 serious ergonomic injuries resulting in time off the job.

According to information you provided to the committee last year, the number of hazard alert letters also appears to be declining. In 2003, there were 224 ergonomic hazard alert letters issued. In 2004, 109. The number fell to 52 in 2005 and 31 letters issued in 2006.

So if we see there were 375,540 serious ergonomic injuries in 2006, why have the number of hazard alert letters declined so significantly? Is OSHA inspecting workplaces for ergonomic hazards?

Secretary CHAO. Yes.

Senator HARKIN. They are.

Secretary CHAO. Yes.

Senator HARKIN. But then why are the hazard alert letters going down when we see all these injuries?

Secretary CHAO. We send out approximately 625 hazard alert letters.

Senator HARKIN. How many?

Secretary CHAO. 625.

Senator HARKIN. 625? When?

Secretary CHAO. I do not have those dates. I can get that for you, but we have sent approximately 625 hazard alert letters to notify employers of ergonomic problems.

We have also issued final ergonomic guidelines for nursing homes, retail grocery stores, poultry processing, and shipyards. We have also conducted over 700 ergonomic inspections per year, and overall ergonomic injuries have been declining.

Senator HARKIN. Well, just a second about that. I will tell you that I do not have 2001 or 2002, but I do have 2003, 2004, 2005, and 2006, and that adds up to maybe 330-some. I do not know where the 625 comes from. Maybe that comes from 2001 and 2002 that I just do not have here.

My point is that it went from 224 to 109 to 52 to 31, and I am just wondering why are the number of hazard alert letters going down so precipitously.

Secretary CHAO. I will take a look at the numbers, but I think, as I mentioned, we have issued approximately 625 hazard alert letters. I will go and try to clarify that for you.

[The information follows:]

The Occupational Safety and Health Administration did not start tracking the ergonomics hazard alert letters until mid-2002 when the Secretary's four-pronged ergonomics program was launched. For 2002–2008, the following information is provided on the number of ergonomics hazard alert letters that were issued by OSHA:

| Year       | Alert letters   |
|------------|-----------------|
| 2002 ..... | 31              |
| 2003 ..... | 259             |
| 2004 ..... | 128             |
| 2005 ..... | 81              |
| 2006 ..... | 38              |
| 2007 ..... | 49              |
| 2008 ..... | <sup>1</sup> 18 |

<sup>1</sup> Through April 2008.

Secretary CHAO. Let us take a look at the injury rate involving days away from work declined because of ergonomic injuries—our injury rate for all injuries, and they have basically have been declining. So in terms of injuries and days lost in terms of work, the trend again has been positive and it has been better than in previous years.

Senator HARKIN. I would ask you to submit that for the record what data you have on showing that decline in ergonomic injuries. Again, I will just say once again if BLS says that they have evidence that they are documenting missing cases because they have workman's comp cases out there but they are not being reported, then I wonder about the validity of how much ergonomic injuries are going down. Even if they are going down, in 2006, it was 375,540. So even if it is coming down, that is way, way—

[The information follows:]

NUMBER AND INCIDENCE RATE OF OCCUPATIONAL INJURIES AND ILLNESSES INVOLVING DAYS AWAY FROM WORK WITH MUSCULOSKELETAL DISORDERS IN PRIVATE INDUSTRY FOR ALL UNITED STATES

| Year                    | Number of cases <sup>1</sup> | Rate per 10,000 workers |
|-------------------------|------------------------------|-------------------------|
| 2006 .....              | 357,160                      | 38.6                    |
| 2005 .....              | 375,540                      | 41.3                    |
| 2004 .....              | 402,700                      | 45.2                    |
| 2003 .....              | 435,180                      | 49.6                    |
| 2002 <sup>2</sup> ..... | 487,915                      | 55.3                    |
| 2001 .....              | 522,528                      | 57.5                    |

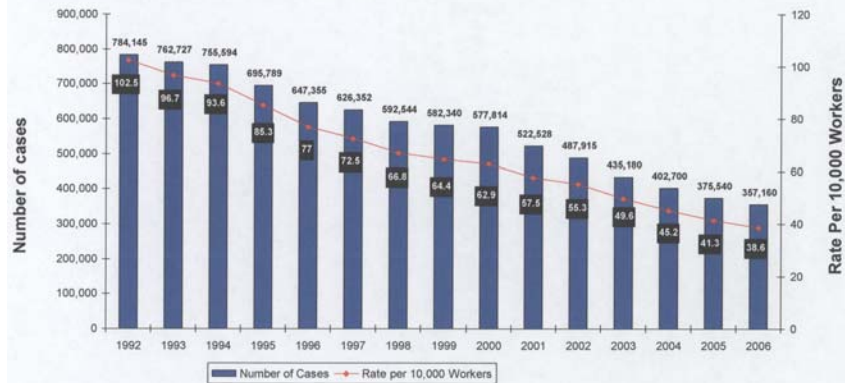
<sup>1</sup> Includes cases where the nature of injury is: sprains, strains, tears; back pain, hurt back; soreness, pain, hurt, except back; carpal tunnel syndrome; hernia; or musculoskeletal system and connective tissue diseases and disorders and when the event or exposure leading to the injury or illness is: bodily reaction/bending, climbing, crawling, reaching, twisting; overexertion; or repetition. Cases of Raynaud's phenomenon, tarsal tunnel syndrome, and herniated spinal discs are not included. Although these cases may be considered MSDs, the survey classifies these cases in categories that also include non-MSD cases.

<sup>2</sup> Effective January 1, 2002, the Occupational Safety and Health Administration (OSHA) revised its requirements for recording occupational injuries and illnesses. Due to the revised recordkeeping rule, estimates from the 2002 survey are not comparable with those from previous years prior to 2002.

Source.—BLS Annual Survey of Occupational Injuries and Illnesses.



## Number and Incident Rate of Musculoskeletal Disorders (MSDs) (1992-2006)



Includes cases where the nature of injury is: sprains, strains, tears; back pain, hurt back; soreness, pain, hurt, except back; carpal tunnel syndrome; hernia, or musculoskeletal system and connective tissue diseases and disorders and when the event or exposure leading to the injury or illness is: bodily reaction/bending, climbing, crawling, reaching, twisting, overexertion, or repetition. Cases of Raynaud's phenomenon, tarsal tunnel syndrome, and herniated spinal discs are not included. Although these cases may be considered MSD's, the survey classifies these cases in categories that also include non-MSD cases.

Secretary CHAO. We are concerned about it, of course.

Senator HARKIN [continuing]. Way too many.

Secretary CHAO. Yes, but that is the overall measurement, is it not? Overall injuries and illnesses?

Senator HARKIN. Yes, but you have only issued 19 ergonomic citations since 2001. You had one in 2005 and none in—

Secretary CHAO. We have a four-prong approach. It is enforcement. It is education and outreach. It is research. It is compliance assistance. Obviously that four-prong approach is working.

Senator HARKIN. Well, when there are 375,540 in 2006, it does not seem like it is working too well.

Secretary CHAO. Obviously, it is working. The current approach has provided positive results, but we can always do better.

Senator HARKIN. Your National Advisory Committee on Ergonomics recommended 16 industries for the development of guidelines, but only 4 were issued. Do you have a timeline when the rest of them will be issued?

Secretary CHAO. The appropriations bill last year asked us to further evaluate these 16 and that is what we are doing now.

Senator HARKIN. I am sorry.

Secretary CHAO. The fiscal year 2008 appropriations bill asked for the Department to further evaluate these 16, and we are doing so.

Senator HARKIN. You are evaluating the 16? Four were issued.

Secretary CHAO. Right. There were 16 additional ones. You are asking for 16 additional ones.

Senator HARKIN. You are evaluating those now?

Secretary CHAO. So we are looking at those, yes.

Senator HARKIN. Okay. Well, just let us know when those are going to be issued.

I do not have the 2007 figures for ergonomic injuries. Do you have them for 2001, 2002, 2003, 2004, and 2005?

Secretary CHAO. I do not have them with me.

Senator HARKIN. I only have 2006.

Secretary CHAO. I will provide them.

[The information follows:]

The Department of Labor has taken a comprehensive approach to ergonomics since 2002, including development of industry- and task-specific guidelines, enforcement, outreach and assistance, and research. As part of this effort, OSHA has committed considerable resources to preventing MSDs in the workplace.

OSHA published guidelines for three industries recommended for guideline development by the National Advisory Committee on Ergonomics (NACE): nursing homes, retail grocery, and poultry processing. OSHA has also just recently published its fourth set of guidelines in the series, which is Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Shipyards.

Further OSHA analysis has identified industries for which the incidence rates for MSDs resulting in days away from work were more than twice the national average for at least 2 of the 3 years for which data were examined. The analysis identified the following 24 industries:

- (NAICS 238140) Masonry contractors
- (NAICS 311423) Dried and dehydrated food manufacturing
- (NAICS 311500) Dairy product manufacturing
- (NAICS 312000) Beverage and tobacco product manufacturing
- (NAICS 321992) Prefabricated wood building manufacturing
- (NAICS 327100) Clay product and refractory manufacturing
- (NAICS 331420) Copper rolling, drawing, extruding and alloying
- (NAICS 331500) Foundries
- (NAICS 334416) Electric coil, transformer, and other inductor manufacturing
- (NAICS 336100) Motor vehicle manufacturing
- (NAICS 336214) Truck trailer and camper manufacturing
- (NAICS 336391) Motor vehicle air-conditioning manufacturing
- (NAICS 336600) Ship and Boat Building
- (NAICS 337215) Showcase, partition, shelving, and locker manufacturing
- (NAICS 424400) Grocery and related product merchant wholesalers
- (NAICS 424800) Beer, wine and distilled alcoholic beverage merchant wholesalers
- (NAICS 444100) Building material and supplies dealers
- (NAICS 481000) Air transportation
- (NAICS 485100) Urban transit systems
- (NAICS 492000) Couriers and messengers
- (NAICS 493100) Warehousing and storage
- (NAICS 562100) Waste collection
- (NAICS 621900) Other ambulatory health care services
- (NAICS 623000) Nursing and residential care facilities

OSHA is currently reviewing this list to determine the next industries to target with ergonomics guidance beyond guidance that has already been issued.

Senator HARKIN. I would like to see how much they are declining by.

Secretary CHAO. Okay, will do.

Senator HARKIN. Still one of the highest reasons for people not being able to work and losing time off the job is ergonomic injuries. Quite frankly, this is going to have to be addressed. I do not suppose it will be, obviously, this year in this administration, but whichever the next administration is, if I am here, I am telling you we are going to get onto ergonomics. Something has to be done because I have been to places.

I have been in places where they have had ergonomic injuries and time off, and sometimes the companies took it upon themselves. Their board of directors said something needs to be done and they did it. By changing simple, little things and providing for different heights of tables and different things like that, you can really cut down on these. I think your Department—

Secretary CHAO. I agree with you on that. It is not a one-size-fits-all, but it is giving general guidelines, education, and research and how employers can adapt the technology and their knowledge to their specific workplace because there is no one-size-fits-all solution to this.

Senator HARKIN. Right, I agree.

Well, it seems to me you had a plan. Well, to me, just again looking at it, it does not seem like you are really implementing your own plan.

Secretary CHAO. It is a four-prong strategy and a great deal of it rests with education, outreach, helping employers and worker groups find their own solution on reducing ergonomic injuries.

Senator HARKIN. I do not disagree with you. That is. But sometimes a good citation——

Secretary CHAO. We certainly do that too.

Senator HARKIN [continuing]. Wakes people up.

Secretary CHAO. Yes, and we have inspections.

Senator HARKIN. Wait a minute. No, you do not——

Secretary CHAO. We use alert letters.

Senator HARKIN. You do not do citations. You did none in 2006 and none last year, not one. There are 375,540 serious injuries in 2006, and you issued no citations. I mean, if it had been three or four, okay. You only issued 19 since 2001. Like I said, sometimes a good citation wakes people up and they start doing things.

Secretary CHAO. We do have inspections too. We have 700 ergonomic inspections every year.

Senator HARKIN. You have 700 ergonomic inspections every year for the entire country. I do not find that too impressive a figure, I got to tell you.

Secretary CHAO. I understand. But the overall injury rate is down, and we can talk about that. We will give the numbers to you.

Senator HARKIN. Well, that is okay. I am glad it is down. It is just awfully high.

Your table says here for fiscal year 2007, there were only 449 ergonomic inspections.

Secretary CHAO. Well, we seem to have a difference of opinion. So let me find out what the difference is. My notes said——

Senator HARKIN. It is in your budget request.

Secretary CHAO. That is not good. Let us find out what happened because I have 700 ergonomic inspections per year.

Senator HARKIN. The actual fiscal year 2007 was 449 in your own book.

Secretary CHAO. Over what period, may I ask?

Senator HARKIN. Fiscal year 2007.

Secretary CHAO. Okay. Let me take a look at that because my notes here said it is 700. So there must be some disconnect.

[The information follows:]

In fiscal year 2006, OSHA conducted 795 ergonomic inspections. In fiscal year 2007, the Agency conducted 705 ergonomic inspections. The discrepancy between this number and the erroneous reporting for fiscal year 2007 in the Agency's fiscal year 2009 Congressional Budget Justification reflects the correction of an error in the coding of inspections that was made subsequent to the publishing of the Congressional Budget Justification.

Secretary CHAO. But from 2003 to 2006, the ergonomic injury rate again declined about 22 percent overall. So this broad-based, multi-prong approach does have value.

Senator HARKIN. From 2002 to 2006?

Secretary CHAO. Right.

Senator HARKIN. Well, I would again appreciate those every year. But again, I will always look at that askance until I find out whether or not we are getting accurate reporting, and we are going to include language in our bill for the Department to go after this and find out what the BLS is saying. Why are they saying that there is missing cases out there? Is it big? Is it small? I do not know. I have not the foggiest idea, but I think we need to find out whether that is real or not because it brings into question whether it has really been a 22 percent decline or not. I do not know until we get a better handle on missing cases and what that means in terms of reporting.

#### OSHA STATE PLANS

Iowa is an OSHA State plan State. How many States are State plans?

Secretary CHAO. About half.

Senator HARKIN. How many?

Secretary CHAO. About half.

Senator HARKIN. Half?

Secretary CHAO. Yes.

Senator HARKIN. About half the States have State plans. It means that the Division of Labor Services rather than OSHA administers the State's workplace safety and health program. Under the Occupational Safety and Health Act, States are authorized to develop their own occupational safety and health plans. The Federal Government will provide 50 percent of the costs. Half of the States operate such a plan. I have got that there.

Dave Neil, the Commissioner of the Department of Labor Services, wrote me earlier this year and noted that the Federal amount provided to Iowa in fiscal year 2008, which we are in, is \$1.6 million, or 37.8 percent, rather than the 50 percent required by OSHA. Why? Why is it less than the 50 percent? And are other States like this? I only know my own State. But why are they getting 37.8 percent rather than the 50 percent?

Secretary CHAO. I actually boned up on the answer for this, and I do not have it handy with me right now.

Senator HARKIN. Well, if you do not have it, just submit it for the record.

Secretary CHAO. Let me get that for you.

[The information follows:]

There are 26 States that operate OSHA-approved State Plans, which deliver the OSHA program to 40 percent of the Nation's employers and employees. Twenty-one States (including Iowa) and Puerto Rico operate complete plans, which cover both the private and public (State and local government) sectors. Three States and the Virgin Islands operate plans that are limited in scope to the public sector.

Section 23(g) of the Occupational Safety and Health Act provides for funding of these State programs at a level which "may not exceed" 50 percent of the total cost to the State of such a program. Annual appropriations language ensures that no State plan is required to contribute more than a 50 percent match of the available Federal funds. However, many States have chosen to contribute significant amounts

of additional funding. Iowa, for the first time in fiscal year 2008, is one of those States.

The Federal funds available for State Plan grants in fiscal year 2008 total \$89,502,000, less than the President requested as a result of final congressional action. Based on the State programs' funding, all States matched the available funds and 20 States contributed additional funds above their match. Iowa contributed \$1,096,040 over and above their \$1,580,800 match.

Senator HARKIN. That is fine. All I would like to know is what would that impact be. Why are they getting less than 50 percent, and how many other States that have State plans are getting less than 50 percent?

We have talked about disability policy.

This will be my last issue I want to go over, and that is the job training portion. Again, the BLS statistics say there are 1.6 million more individuals unemployed today than there were when this President took office, when you took office. The unemployment rate is higher, 5 percent versus 4.2 percent. Nevertheless, this budget cuts training and employment services account programs by almost 14 percent, or \$484 million.

Again, this is training and employment services. Well, with unemployment going up, the number of unemployed going up, why is your budget cutting the training and employment services account by 14 percent?

Secretary CHAO. Well, let me say, again, the workforce expands by about 1 million—800,000 workers a year—8.6 million net new jobs have been created since August 2003. The unemployment rate is 5 percent. This is lower than the average unemployment rate of the decade of the 1990's, which is 5.7 percent.

We still have an estimated \$875 million carryover of unspent WIA funds available to the States, even after completing the \$250 million rescission required by the fiscal year 2008 appropriations bill.

There is a major debate about the Workforce Investment Act and how we should proceed.

Senator HARKIN. Yes, I heard that.

Secretary CHAO. Yes. It is an issue with the authorizing committees. We obviously have very different points of view about it. With every successive round of reforms to the system, there are overlays of new systems upon the old. It is to the point now that there are duplicative structures.

So we have an employment services. They are staffed by wonderful people. I do not mean to disrespect the professionals who do this work. But I think they also must face some frustration in dealing with the bureaucracy that is duplicative, that is not responsive to the needs of a new century in which higher skill jobs are being created and more training of more specialized types is required. That is not currently being provided fully by the system.

So, again, with unspent funds of \$1.7 billion sometimes to currently this year of \$875 million, there is a lot of carryover.

Senator HARKIN. I just told my staff—I said I got to get a handle on this. I know there is a 3-year roll on that thing.

States have been reporting to you how much they have to return because of this rescission that we had. Iowa's share is \$1.3 million. They returned almost \$1 million of funds available for current operations, and they did not have any excess money out there. So as

a result, they are going to provide less training and job search and placement.

So this excess funds is not right. I keep hearing you say that, but I look at my own State and they do not have any.

Secretary CHAO. I do not have the State-by-State breakdown. I usually carry it with me. We can provide that for you. Even after the rescission—I do not know about Iowa, but most of them do have excess funds left over.

Senator HARKIN. My staff said what they are doing is they are taking it out of current money, of course. That is exactly what they are doing.

But all I know is Iowa does not have it, and I just do not know how many States—well, that might be interesting. Do we know what States?

Secretary CHAO. It is pretty much across the board.

Senator HARKIN. My staff says they are reporting today on that. The Department of Labor is reporting on this today. So I will take a look at that also.

Secretary CHAO. But there are duplicative structures. Beyond the excess unspent funds, there is a larger issue about workforce investment. WIA was supposed to be a one-stop shopping center for workers, dislocated workers, unemployed workers. It has still not fulfilled this one-stop function through a variety of reasons. There are other agencies who have not joined in. There are duplicative structures that are still outstanding.

I totally agree with you. We need to invest in our workforce, but we need to make sure that the reforms are there so that workers are, indeed, getting trained. Currently not as many are getting the training as they need, and that is the real tragedy.

Senator HARKIN. Well, I agree with you on that, but I do not think there is all that excess money out there that you keep talking about.

Secretary CHAO. Well, if you go a workforce investment system—and I love the system dearly. These are wonderful people who staff this system, but you have duplicative services. You go into a building. On the left is employment services. On the right is workforce investment, and they do not work with one another. Something needs to be done about that, which is what the reform package is all about.

I am optimistic. I think that this discussion is ongoing on a national level. It will take some more time for the system to come to some consensus on how to reform this, but there are some real reforms that are necessary.

Senator HARKIN. Well, Madam Secretary, thank you very much. You have been very kind with your time, and these are tough areas. Some of them you and I have just had disagreements on for a long time, on that ILAB and a few other things like that. But on that ILAB, I still think it is an important thing that they are doing on that grant program.

I want to get a handle on this BLS issue on under-reporting.

But I will close with this. Madam Secretary, last year's appropriations bill and report called for reports on a number of issues, including noncompetitive awards, the issuing of safety and health

regulations, among other topics. I would request that you personally look into moving those reports along.

Secretary CHAO. I will.

Senator HARKIN. Like I said, sometimes I do not know if what we have here is right or not. We have to look at these things. So I would ask that you move those reports along so we can take a look at them.

Also, I would leave the record open for any members of the subcommittee who could not be here to submit questions for you in writing for the record.

Secretary CHAO. Thank you. I also realized I did not answer your question about the refinery inspections, and I certainly do not want to drag this anymore. But if I can provide a fuller answer on what happened there, in terms of inspections, I would appreciate that.

Senator HARKIN. That would be good. That was one issue that sort of stuck out like a sore thumb there.

Well, Madam Secretary, unless you have anything else—

Secretary CHAO. Thank you very much.

[The information follows:]

The Occupational Safety and Health Administration's refinery National Emphasis Program (NEP) was initiated in June 2007. At that time, OSHA stated that the agency will conduct all of the refinery inspections covered by the NEP within 2 years—June of 2009. The agency is on track to meet that timeline.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator HARKIN. There will be some additional questions which will be submitted for your response in the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR TOM HARKIN

##### PROGRAM INTEGRATION

*Question.* In the Department's response to congressional concerns about adult, dislocated, and youth programs at local one-stop career centers overlapping statewide labor exchange services provided through the State unemployment insurance and employment services operations account, the Department indicated that it has worked with States to develop and submit plans for program integration.

How many States have developed and submitted such plans?

*Answer.* The Department has worked with States to develop and submit plans for Workforce Investment Act (WIA) and Wagner-Peyser Act Employment Service program integration; these plans are part of the WIA/Wagner-Peyser Act Strategic State Plans that are regularly submitted by the States. WIA section 112 requires all States to submit a State Plan as a condition of receiving funds. The Plans address multiple requirements of WIA, including program integration, governance structures, performance accountability systems, effective use of funds, and planned service delivery strategies.

*Question.* Please describe specifically the policies implemented to break down barriers to program integration; how States plan to increase the efficient use of administrative resources; and how States plan to coordinate the use of Wagner-Peyser Act and WIA funds to avoid duplication?

*Answer.* The State Plan Guidance issued by the Department for Program Years (PY) 2007–2008 was supplemented by a revised National Strategic Direction issued in Training and Employment Guidance Letter 13–06. The National Strategic Direction outlined a vision for transforming the public workforce investment system to develop and implement talent development strategies that support growth in economic regions, contributing to the Nation's economic competitiveness. Program integration is a key pillar in this approach, and the National Strategic Vision articulates a need for the workforce system to operate as a seamless system functionally

organized around service delivery rather than as an array of separate programs with separate processes, where customers are seen as customers of the entire workforce system rather than of a particular program.

In keeping with that vision of integration, the State Plan instructions required States to: (1) describe policies in place to change or modify barriers to integration; (2) describe more efficient uses of administrative resources, such as eliminating duplicative facility and operational costs; (3) promote models or strategies for local use that support integration; (4) describe how services provided through One-Stop partners will be coordinated; and (5) describe how States will coordinate Wagner-Peyser Act funds to avoid duplication. State Plans for Program Years 2007–2008 were last submitted in May 2007, and will expire June 30, 2009. States will next submit plans in April 2009 for Program Year 2009.

The Department has made an effort to use State Plans as a strategic tool to advance a transformed workforce system. To this end, the Department regularly monitors States' implementation of the strategies outlined in their State Plans, including their level of integration, and offers technical assistance to States that require it. The Department has also developed a comprehensive technical assistance plan, based in part on the needs of States the Department identified by reviewing their State Plans and monitoring their implementation.

All States have developed and submitted State Plans, and all plans address program integration. One specific example of a State effort to break down barriers to program integration is setting program integration as a State policy objective. For instance, Massachusetts has established the "Regional Directors of Workforce Integration" to ensure program integration at One-Stop Career Centers, and Oregon's workforce development leadership personally visits areas in the State that need technical assistance to achieve State integration of service goals. Another State policy to break down barriers to integration is combining and integrating State government agencies that oversee different workforce programs. For example, New Mexico's legislature recently created the New Mexico Department of Workforce Solutions, California consolidated its WIA and Employment Service programs into a single integrated unit called the Workforce Services Division, and Utah administers a number of federally-funded workforce programs under the Department of Workforce Services. Other States have looked to improve One-Stop Career Center operations to improve program integration. For instance, Maine has organized its staffing and services around a functional team concept, rather than teams driven by funding source, to deliver seamless and integrated services to participants. Lastly, several States, such as New Jersey, require satisfactory levels of integration in order to certify sites as One-Stop Career Centers.

State Plans also define strategies to increase the efficient use of administrative resources as well as strategies to use funds to avoid duplication. For instance, Texas administers a number of Federally-funded workforce programs through the Texas Workforce Commission and gives local workforce investment boards wide discretion in the use of funds to best serve their local population and regional economy. Arizona has moved to centralize service delivery in structures where overhead and administrative services are shared, particularly in rural areas.

*Question.* Is there any evidence that these plans are leading to better program integration, more efficient use of Federal resources and better program outcomes?

*Answer.* The Department believes that strategic planning does lead to better program integration, more efficient use of Federal resources, and better program outcomes. Because all States have been required to submit State Plans since the inception of WIA, the Department cannot compare States with plans to States without plans, or compare performance before and after a plan in order to produce "evidence" that plans result in positive changes. However, experience shows that States that have written strong, strategic State Plans are more likely to have integrated service structures, resulting in more efficient use of funds and improved program outcomes. For instance, Oregon, which ranks among the top 10 States on the entered employment rates for both the Adult and Dislocated Worker programs, submitted a plan that showed close coordination between workforce programs, and has recently closed a number of "stand-alone" Employment Service offices. Michigan, which also ranks among the top 10 States on both Adult and Dislocated Worker entered employment rates, submitted an exemplary State Plan that includes creative solutions for programs integration, regional planning, and innovative talent development strategies.

Although the strategic use of State Plans encourages program integration, the statutory requirements of WIA and the Wagner-Peyser Act still result in duplication in the public workforce investment system. By streamlining these systems, States can train more workers and provide more services. The Department has consistently supported legislative proposals to consolidate WIA title I and Wagner-Peyser Act



Employment Service programs, most recently in the WIA reauthorization and reform proposal, "Workforce Investment Act Amendments 2007," submitted to Congress in April 2007. Further, the Department has pursued rule making that would require local Employment Service offices to be located in the comprehensive One-Stop Career Centers and not be considered affiliate sites (Federal Register: December 20, 2006, Vol. 71, No. 244). However, Congress barred the implementation of this revision in the fiscal year 2007 and fiscal year 2008 Appropriations Acts.

#### CAPACITY BUILDING AND EVALUATION

*Question.* Please describe the specific actions (including any discretionary grant funding) ETA has taken to build the capacity in States to share best practices and undertake rigorous evaluations on the impact of WIA State grant funding?

*Answer.* One of the Department's core missions is to build the capacity in States to effectively provide workforce services and to actively engage with a wide array of strategic partners in workforce development strategies. Examples of strategies to support sharing of best practices include the Workforce<sup>3</sup>One Web site, the Workforce Innovations Conference, Transformational Forums, and the National Business Learning Partnership.

—Workforce<sup>3</sup>One is an interactive Web site designed to build the capacity of the public workforce investment system through training, resources, and regular communication ([www.workforce3one.org](http://www.workforce3one.org)). The Workforce<sup>3</sup>One Web site offers the workforce system an innovative knowledge network designed to create and support community solutions that respond directly to business needs and to develop strategies that enable individuals to be successful in the 21st century economy.

—Workforce Innovations is a forum hosted by the Department for States to share best practices. The conference draws over 3,000 participants from industry, education, the economic development community, and the workforce system, offering an opportunity to explore their important roles in meeting the national challenge of global competition.

—The Transformational Forums series, is a broad-based capacity building initiative to transform the workforce system, and provides an opportunity for States to share best practices. The Forums offer teams, comprised of State and local workforce representatives, a unique, customer-driven learning experience designed to provide support as they envision energized, and catalyzed innovative service delivery strategies.

—The National Business Learning Partnerships (NBLP), a peer-to-peer collaborative technical assistance effort among State and local Workforce Investment Boards and the Employment and Training Administration's regional and national offices, provides States an opportunity to build their workforce system capacity and share best practices.

In addition to capacity building the Department is currently conducting, a rigorous non-experimental net impact evaluation of the receipt of Workforce Investment Act (WIA) core and intensive services and the incremental impact of WIA training on participant's earning, employment, and retention. The evaluation involves comparing the outcomes of WIA participants to the outcomes of similar individuals drawn from a matched comparison group. Results from this evaluation will be provided to the Department in the fall of this year.

In June 2008, the Department will launch the Workforce Investment Act Gold Standard Evaluation (WGSE). The WGSE is a 7-year, rigorous, random assignment evaluation of the Adult, Dislocated Worker, and Youth formula programs established under title I of WIA. The evaluation will examine these programs' impacts on participants' post-program employment and earnings and their cost effectiveness. The evaluation will compare outcomes of WIA participants to the outcomes of similar individuals who do not receive WIA services. The results of the evaluation will be used to determine what aspects of the current system work versus those that do not work. This information will help improve the workforce investment system and inform any WIA reforms, as applicable. Interim evaluation results will from the WGSE will be generated periodically beginning in the fall of 2011 and final results are anticipated to being available in 2015.

*Question.* What has been the outcomes associated with these activities?

*Answer.* The outcomes associated with the Department's activities to build the capacity in States to share best practices include:

—Workforce<sup>3</sup>One.—There is currently over 31,000 registrants of the site. Registrants engage in Webinar events, download materials, and share best practices by submitting content. Individuals have visited the site over 72,000 times

in the past year, have downloaded over 15,000 pieces of content, and thousands of individuals have engaged in Webinars.

—*Workforce Innovations*.—States have directly shared best practices through workshop sessions, conference materials, and structured and informal opportunities for networking.

—*Transformational Forums*.—A total of 55 teams, representing over 40 States, were able to explore critical workforce system challenges and opportunities, receive customized coaching from mentors and peers, develop concrete action steps for advancing talent development strategies for economic growth, and contribute to the development of a shared national vision for workforce system transformation

—*National Business Learning Partnerships*.—A total of 44 State and local workforce investment boards attended workshops, established mentor/protegé teams, shared technical assistance, documented best practices, and published numerous case studies and other technical assistance materials.

*Question.* What is proposed in the 2009 budget for this purpose?

*Answer.* The Department's fiscal year 2009 budget requests \$16.88 million to support workforce information, electronic tools, and system building. In addition, the Department has requested \$32 million for labor market information grants; these grant funds are part of the administration's WIA reform proposal. With this request, the Department will continue to share innovative demand-driven talent development strategies in support of regional economic competitiveness through the Workforce<sup>3</sup>One Web site. The Department will also implement a comprehensive technical assistance strategy that continues the work of the Transformational Forum teams, offer Webinars on topics to address capacity-building needs identified through the WIA/Wagner-Peyser State Planning process, and support various strategies to integrate program and services. Lastly, the Department will continue to develop expanded sets of strategic partnerships with community colleges, the economic development community, faith and community-based organizations, foundations, and other Federal agencies.

#### WIA YOUTH SERVICES

*Question.* In February of this year, the Government Accountability Office (GAO) issued a report on disconnected youth. The report noted that researcher estimates of the number of disconnected youth range from 2.3 million to 5.2 million. According to GAO, funding for many of the key Federal programs we reviewed that serve disconnected youth has remained the same or declined since 2000. The report also found that 15 directors with Federal WIA Youth funding noted that the need to meet certain WIA youth performance goals within short-term time frames discouraged them from serving youth that may need more time and assistance to achieve specified outcomes. What is the Department's plan for ensuring that funds are able to be used to effectively address youth most in need of WIA services?

*Answer.* As a long-term strategy to ensure that WIA Youth Formula funds are used to effectively address youth most in need of WIA services, in 2004, the Department adopted and announced its new strategic vision to serve more effectively those youth most in need of services: out-of-school youth and at-risk youth. Recognizing the need to involve other Federal agencies, the Department pursued an outreach and recruitment strategy that led to the creation of a national cross-agency group. This group has evolved into the Shared Youth Vision Federal Partnership and includes the U.S. Departments of Agriculture, Education, Health and Human Services, Housing and Urban Development, Justice, Labor, and Transportation; the Social Security Administration; and the Corporation for National and Community Service. By leveraging other Federal resources in support of WIA enrolled youth, WIA youth service providers and local workforce areas can focus their resources on employment and training needs while also collaboratively supporting other important issues faced by a needier youth population, including health, substance abuse, transportation, and housing.

The Federal Partnership has been actively involved in sponsoring numerous activities to promote the Shared Youth Vision to State and local agencies serving youth. These activities have included: (1) a series of Shared Youth Vision technical assistance forums nationwide for State teams; (2) the selection of 16 Shared Youth Vision Pilot Project State teams to develop and implement strategic approaches that leverage their State-level coordination at the local service delivery level; (3) the development and implementation of a comprehensive technical assistance plan for infusing the collaborative vision in all States throughout the country; and (4) funding a Shared Youth Vision Implementation Study to conduct an analysis of the work of the Federal Partnership and the work of the State pilot teams to better serve the

neediest youth. The findings from this analysis will be widely distributed throughout the country.

The Department also intends to work with workforce investment boards to identify constraints and plans to issue guidance to the public workforce investment system in the fall of 2008 that will provide specific examples on how local service providers successfully serve youth at varying skill levels, but with an emphasis on youth most in need. In addition, the Department will provide technical assistance to support the implementation of this guidance.

*Question.* How have the funding reductions noted in the GAO report impacted program performance, including youth participation and outcomes?

*Answer.* Although fewer total youth have been served through the Workforce Investment Act (WIA) Youth program, more of the youth being served are out-of-school youth who require more intensive services. Despite this challenge, there has been no significant change to the performance outcomes of participants in the WIA Youth program. In its report, the Government Accountability Office State that the increased Federal coordination efforts currently underway should help to address the challenges faced by local programs.

#### NATIONAL FARMWORKER JOBS PROGRAM

*Question.* According to the Department's website, the National Farmworker Jobs Program (NFJP) entered employment rate rose from 64 percent in the quarter ending 9/30/06 to 76 percent in the quarter ending 9/30/07, an increase of almost one-fifth in the percentage of exiters who found jobs. This sounds like an effective investment. Did the Department base its decision to eliminate program funding on some other outcome information? If not, why would the Department propose eliminating funding for this successful program?

*Answer.* Individuals being served by the National Farmworker Jobs Program (NFJP) have similar types of barriers to full-time employment as other workers, and the relatively small NFJP do not provide its participants with the full array of benefits they would derive from the public workforce investment system. Historically, many program participants received only supportive services in the NFJP. Rather than placing farmworkers into a program that has not always provided year-round employment to its participants, the Department believes that these workers should have access to the full spectrum of workforce investment services and a broader employment network.

For the past 6 fiscal years (fiscal year 2003–2008), the administration has not requested budget authority for Workforce Investment Act section 167 NFJP. Instead, the Department has pursued other strategies to ensure agricultural employers and farmworkers have access to the full spectrum of workforce investment services available through the broader workforce system, including:

- Providing technical assistance and information to increase the level of collaboration and coordination among One-Stop partners to increase services to farmworkers in the One-Stop system; and
- Investing \$1 million in a cross-training demonstration in California focused on integrating services available to farmworkers.

*Question.* Previously, the Department has stated that one of the reasons funding has not been requested for this program is that migrant and seasonal farmworkers can be served through the workforce investment system. Does the Department have any data that reflect service levels to this population through the workforce system?

*Answer.* The most recent performance data pertaining to services provided through Wagner-Peyser Employment Service funding indicates approximately 150,000 migrant and seasonal farmworkers have been served in PY 2007.

*Question.* State and local workforce boards have developed plans to address this population. What evidence do you have that activities planned are actually being implemented? Is there any evidence that they are resulting in effective services to migrant and seasonal farmworker population?

*Answer.* The Department has been actively implementing a strategy within the current National Farmworker Jobs Program (NFJP) and Workforce Investment Act (WIA) programs to integrate farmworker services into the broader public workforce investment system. The States have provided the Department with preliminary indications that State and local workforce boards have been expanding the network of employers using the workforce investment system, targeting occupations in high-growth industries and operationalizing the integration of services.

The most recent WIA State Plans included specific State and local activities:

- The Missouri workforce system has established a strong partnership with the NFJP grantee. This partnership results in the sharing of knowledge and collaboration to perform planned community activities and intake for the migrant

and seasonal farmworker (MSFW) population. The combined local expertise of faith-based, community, and other organizations that specialize in serving the MSFW population have increased the capacity and effectiveness of the One-Stop system.

- The New Mexico Workforce Centers will provide on-site services in local workforce investment areas where the MSFW population is employed.
- Tennessee will conduct an outreach program designed to contact MSFWs who are not reached by usual intake activities and inform them of the full range of services available.

Additionally, since WIA requires the Department to conduct a biennial grant competition for the NFJP, the last three Solicitations for Grant Applications have required applicants to design their programs around priorities engineered to continue the drive towards the full integration of services. The next round of grant applications is due June 2, 2008. In reviewing these applications, the Department will look for additional indicators of improved service delivery for farmworkers.

*Question.* The National Agricultural Workers Survey (NAWS) is an employment-based, random survey of the demographic, employment, and health characteristics of the U.S. crop labor force. It has been more than 3 years since the 2001–2002 report was released and I understand the Department collected the 2003–2004 data some time ago. When will the 2003–2004 report be issued? What is the timeline for future data collections and reports related to the NAWS?

*Answer.* The Department's Employment and Training Administration (ETA) is currently working on two National Agriculture Workers Survey (NAWS) national level findings reports. The first report will summarize NAWS data collected in fiscal years 2003 and 2004; the second will summarize fiscal years 2005–2006 NAWS data. ETA expects both of these reports to be available via the NAWS Web site in August, <http://www.doleta.gov/agworker/naws.cfm>.

NAWS data are collected annually in three interview cycles. The third interview cycle for fiscal year 2008 began on June 3, 2008 and is expected to continue through September 2008. The first interview cycle of fiscal year 2009 will begin in October 2008. Depending on the availability of resources, NAWS reports are published biannually. The summary report of the fiscal 2007–2008 findings is expected to be available by September 2009.

ETA has focused its efforts over the last 2 years in developing and obtaining approval for release of a NAWS public access data set. This decision was prompted by the large number of requests for a wide range of data and findings from the NAWS.

We are very pleased to report that the public access data set covering fiscal years 1989 to 2006, as well as the codebook, English and Spanish versions of the questionnaire, the interviewer training manual, and documents describing the statistical methodology and tips for analyzing the data, were posted to the NAWS Web site in November 2007. The release of these materials was announced to all State Workforce Agencies and liaisons via Training and Employment Notice 18–07, <http://wdr.doleta.gov/directives/attach/TEN/ten2007/TEN18-907acc.pdf>.

#### YOUTHBUILD

*Question.* Congress passed legislation to move the YouthBuild program to the Department of Labor in response to the White House Task force on Disadvantaged Youth recommending that YouthBuild was better aligned with the DOL's mission to bring the most disadvantaged youth into productive employment. How do you see YouthBuild fitting into that mission and how is this first year going? And, how do you plan to expand to meet the growing demand for YouthBuild services?

*Answer.* The YouthBuild model balances in-school learning, geared toward a high school diploma or GED, and construction skills training, geared toward career placement. The in-school component is an alternative education program that assists youth who are often significantly behind in basic skills to obtain a high school diploma or GED credential. The primary target populations for YouthBuild are high school drop-outs, adjudicated youth, youth aging out of foster care, and other at-risk youth populations. The YouthBuild model enables these youth to access the education and training they need to secure employment in the 21st century economy.

The first year of administering the YouthBuild program is going extremely well. The YouthBuild Transfer Act was enacted on September 22, 2006. Since that time, the Department has:

- Held its first YouthBuild grant competition in the spring of 2007 and awarded 96 grants on October 15, 2007;

- Developed, implemented, and trained grantees on a Web-based Case Management and Performance system that provides quarterly performance reports and captures performance data on the effectiveness of the YouthBuild program;
- Initiated the process of developing regulations for the YouthBuild program;
- Provided on-going technical assistance to YouthBuild grantees; and
- Created an oversight structure for grant monitoring.

In fiscal year 2009, the program will continue to provide job placement and employment opportunities for disadvantaged youth, and will serve an estimated 3,200 participants.

#### COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

*Question.* The 2009 budget proposes \$350,000,000 for the Community Service Employment for Older Americans program, a reduction of \$171,625,000 from the 2008 level. This would result in a cut in the number of authorized training slots from 59,316 supported by the 2008 appropriation to 36,300 allowed by the budget request. What appropriation level is needed in 2009 to avoid the reduction proposed in the 2009 President's budget?

*Answer.* An fiscal year 2009 Appropriation of \$571,924,872 would be needed to fund the number of slots funded by the 2008 level (59,316 slots).

#### ASSISTANCE TO OLDER WORKERS

*Question.* The recently released report "Current strategies to employ and retain older workers" which was commissioned by the Department to support the Task Force on the Aging of the American Workforce highlights the challenges older workers face, particularly with low skills, in the labor market. Many SCSEP participants have additional barriers to employment that WIA programs are less suited to adequately assist.

With deep cuts proposed to the workforce system and the elimination of funding for the Employment Service, One-Stop centers will have fewer resources with which to attempt to serve effectively this population. How can the administration request cuts to this program, once again, at a time when our senior population continues to grow with low employment prospects?

*Answer.* The fiscal year 2009 budget request complements the administration's proposal for job training reform, which seeks to provide services in a more cost-effective way and will benefit older workers, as well as others. Overall, the fiscal year 2009 budget makes a substantial investment in job training to the benefit of all workers, including older individuals.

Older workers are a diverse group. Some older workers have retired and want to or need to go back to work for self-fulfillment or financial reasons, or both. Other older workers are approaching retirement and are looking for more flexible alternative employment that will allow them to balance work, leisure, and the pursuit of other interests. Still others have lost their jobs due to business closures and downsizings before they qualify for a pension or Social Security and they need a new job, often in a different career field, to support themselves and their families until they are eligible for retirement. What these workers have in common is the need to acquire new skills to qualify for jobs in today's labor market. The Career Advancement Accounts proposed by the administration offer a flexible new approach that will allow older workers in each of these situations to obtain the training and education they need to obtain new jobs.

Older workers will benefit from the administration's reform proposals in other ways, too. The requirements relating to the eligibility of training providers, which under current law have had the unintended consequence of deterring many training providers from participating in WIA, would be simplified. This change in eligibility requirements will substantially increase the number of training providers, such as community colleges, and provide participants with a greater availability of choices. Also, training will be available for incumbent workers to help them move up career ladders. Most important, the public workforce investment system will be made more productive, with three times the number of workers trained compared with the current system—this means more opportunities for older workers.

#### STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

*Question.* What is the 5-year funding history of obligations for automation investments, including the most recent year for which information on such obligations is available? How have these investments contributed toward the goals of detecting overpayments and facilitating re-employment?

*Answer.* Between fiscal year 2004 and fiscal year 2008, \$12.8 billion was appropriated for State Unemployment Insurance (UI) Administration. Of that amount,

the Department has information on a relatively small portion, approximately \$83.7 million or 0.658 percent, that it allocated to the States for specific automation investments. Additionally, States have used appropriated funds allocated for overall UI program administration, as well as a significant amount of State funds, to make automation investments. However, information about the specific uses of those funds is not collected. Such funds were typically used for major automation acquisitions, such as the replacement of computer hardware and the modernization of State benefit and tax system software systems. These major modernization projects usually cost between \$30 million to \$70 million.

The \$83.7 million the Department provided the States for specific automation investments was used as follows:

- \$6.9 million was obligated to States specifically for integrating a software package developed by the Department into their UI and Workforce automated systems that significantly improve the accuracy and efficiency of UI claimant occupational coding. Improving the accuracy of occupational coding ensures that those charged with providing re-employment services have the best information available to match UI claimants to employment opportunities.
- \$31.6 million was obligated to correct information technology (IT) security vulnerabilities identified through IT security audits. These improvements help protect electronically stored data (personal identifiable information and wage information) that States store on virtually every worker in the country that if stolen could lead to identity theft, fraudulent UI claims, and other problems for the affected workers.
- \$15.6 million purchased systems that support the detection and collection of improper payments, such as tools to aid the investigation of potential overpayments and the collection of outstanding overpayment debts.
- \$12.9 million implemented a variety of systems that helped detect fraudulently filed claims, such as multiple claims filed from the same telephone number or multiple benefit payments going to the same address.
- \$6.8 million was used for State system changes necessary for electronic access to the National Directory of New Hires which allows States to determine if UI beneficiaries have recently returned to work anywhere in the country and are ineligible to claim and collect UI benefits.
- \$6.7 million allowed States to cross-match information provided by UI claimants with other sources of information, such as departments of motor vehicles to ensure the claimants' identity, or prison records to ensure inmates were not collecting benefits.
- \$1.8 million helped implement debit cards as a means of paying UI benefits, thus, improving efficiency and also preventing stolen benefit checks.
- \$0.7 million implemented electronic access to the Social Security Administration database to validate Social Security Numbers of UI claimants, thereby eliminating the possibility of an individual using a bogus number to collect benefits fraudulently.
- \$0.7 million for internal security software to monitor employee access to confidential records to detect unusual patterns that might signal fraudulent activity.

#### RE-EMPLOYMENT AND ELIGIBILITY ASSESSMENTS GRANTS

*Question.* The Department is requesting \$40 million for the re-employment eligibility assessments initiative, to build on the grants that have been made available over the past several years. What has the experience been with this initiative in terms of helping UI claimants find jobs faster, thereby reducing the duration of unemployment and saving UI trust fund resources? Have sufficient resources been available to provide all of the follow-up services required to make this an effective initiative?

*Answer.* The Department conducted an evaluation of Reemployment and Eligibility Assessment (REA) programs in 2006 and 2007. The evaluation's final report was published in March 2008. Nine States were part of the evaluation which included an in-depth analysis of the REA initiative in two of these States, North Dakota and Minnesota. The findings of this study indicated strong positive effects on Unemployment Insurance (UI) claimants' return to work, as well as significant cost savings for the States. The analysis suggests that REAs are an effective strategy for reducing overpayments and expediting return to work.

In addition to the results from this evaluation, there is anecdotal evidence from several other States suggesting that REAs have demonstrated impact. For example, Maine and New York have independently conveyed the following information:

—During the period from April 2005 through March 2006, New York showed a savings of \$1.9 million from reduced benefit durations of claimants participating in REAs versus a comparison group. The savings were \$3 for each \$1 invested in REAs.

—During the period from June 15, 2005, through June 15, 2006, Maine calculated savings at more than \$2 million, or \$3.33 for each \$1 invested.

As a result, the Department is now pursuing further analysis of the REA initiative, as the aforementioned savings mean fewer dollars expended from the States' UI trust funds, which translates into lower taxes on employers. The planned analysis will benefit from obtaining impact and cost data from three to five States. This in-depth study will yield reliable statistical estimates of UI trust fund savings, duration reductions, and re-employment impacts, as determined for UI recipients who participate in the REA initiative.

Because of the demonstrated success of the REA initiative, some participating States requested additional funds to expand their REA programs statewide. Additionally, 11 States not currently participating with REA submitted strong proposals to implement an REA initiative in 2008. However, funds were not appropriated to expand the REA initiative.

We are not aware of resource constraints for re-employment services resulting from REA activities. An interim evaluation report indicated that the participating States saw the REA initiative as an opportunity to expose more claimants to available re-employment services.

#### STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

*Question.* The 2009 budget justification indicates that ETA will use the 2008 appropriation for the disability program navigator initiative to support States whose grant ended on June 30, 2008 as recommended by the committee. How many of those States and new States have expressed interest in such funds? ETA also is working with States to identify alternative sources of funding. What resources have been identified to support the DPN initiative and make it sustainable without a separate funding stream?

*Answer.* Currently, 31 Disability Program Navigator (DPN) grants will expire on June 30, 2008. All 31 States have indicated an interest in receiving funds to continue their DPN grant work.

The Department has issued the annual program planning guidance instructing the State DPN grantees on how to revise and submit key program documents necessary to receive program funding in the next year, and we are now reviewing their submissions. We will award the remaining Program Year (PY) 2007 funds by June 30, 2008, and awarding new PY 2008 funds shortly after July 1, 2008. We are also extending the period of performance for all 31 States for an additional year, until July 1, 2009. By August 2008, a new Solicitation for Grants (SGA), with \$2.5 million in PY 2008 funds, will be disseminated to fund cooperative agreements for States and territories that do not currently have a DPN grant. Those States and territories are: American Samoa, Guam, Virgin Islands, Arkansas, Kentucky, Nevada, North Dakota, and Wyoming. When the Department issued an SGA for DPN funding over a year ago, several of these States were not interested in applying, and we do not know how many of these eight States and territories will now apply for DPN funding.

We have been encouraging the States with DPN cooperative agreements to develop sustainability strategies and plans. Such plans include seeking funds from Medicaid Infrastructure Grants, Vocational Rehabilitation agencies, the Workforce Investment Act 15 percent State set-aside, the Department of Transportation's related programs, other public or private organizations, or as an Employment Network (EN) under the Social Security Administration's newly revised and issued Ticket to Work Program regulations. The new Ticket to Work regulations make it much easier for the One-Stop Career Centers and State/Local Workforce Investment Boards to become ENs, thereby simplifying their ability to get reimbursed for eligible customers they are already serving.

#### EMPLOYMENT SERVICE GRANTS TO STATES

*Question.* According to the Government Accountability Office's (GAO) 2007 Study of One Stop Centers, WIA funds and Employment Services Grants to States are the primary funding sources for the one-stop infrastructure. GAO reports that over the last 4 years, 19 States have reported a decrease in the number one stop centers, often citing a decrease in funds as one of the primary reasons.

Some States reported an increase in demand for services. Given the proposed consolidation of programs and the reduction in funding that you propose, how will the Department ensure that unemployed people receive the services they need?

Answer. The services needed by unemployed people will continue to be provided under the fiscal year 2009 budget request, which complements the administration's proposal for job training reform. This reform proposal would consolidate the Employment Service and the Workforce Investment Act Adult, Dislocated Worker, and Youth funding streams into a single funding stream to be used for Career Advancement Accounts and employment services. This consolidated funding stream will provide services in a more cost-effective way by eliminating duplication, replacing the current siloed system of separate training programs, reducing administrative and overhead costs, and, most importantly, significantly increasing the number of individuals who receive job training. Under the current system, approximately 200,000 individuals receive training through the public workforce investment system each year. However, the proposed reforms would increase the number of workers trained to over 600,000.

Additionally, an estimated 10,878,000 participants would receive employment services. The need for labor exchange services, such as resume posting and job search assistance, have largely been privatized and job seekers now have free access to Internet job boards that allow them to search for jobs and often post their resumes.

#### ASSISTANCE WITH MAKING TRAINING DECISIONS

*Question.* The Department proposes to significantly restructure the way unemployed people receive the services they need to once again become productively employed. Part of the new strategy would be to consolidate ES and WIA and to shift more funds into training vouchers for the unemployed and much less funding into up front services such as counseling and assessment. Yet GAO has found that such case management services are integral to ensure that unemployed people get the right services and the most appropriate training that will lead to a job. How will the budget proposal help the unemployed make good training decisions and effectively use the vouchers you propose?

Answer. Some individuals will undoubtedly need the assistance of career counselors in making training decisions, and States and local areas can provide this type of assistance with the portion of funds that can be used for employment services. This includes counseling, both basic and intensive, and assessment. However, many, if not most individuals, will be able to make training choices through a basic up-front assessment (as contrasted with ongoing and costly case management) and good consumer information on training providers. The Department of Labor also funds the development of workforce information, including information on high-growth occupations, which may be useful in making these decisions; under the administration's WIA reform proposal this funding will be provided to the States as part of the consolidated grant.

Under the Career Advancement Account (CAA) proposal, States would be required to ensure the credibility and accountability of training providers. States would also ensure that CAA recipients have sufficient consumer information on the quality and outcomes of the education and training provided by the institutions where the accounts can be used. Furthermore, it is in the State's interest to ensure that high quality training is provided in order to meet performance outcomes.

Findings from the Individual Training Account (ITA) Experiment have informed the development of our Workforce Investment Act reauthorization and CAA proposal. The outcomes of this demonstration suggest that (1) additional counseling and career guidance do not significantly affect the employment and training outcomes of participants; (2) more people access training with ITAs when given individual choice and flexibility; and (3) individuals are capable, on their own, of choosing an appropriate training path that leads to sustainable employment. Furthermore, approximately 5 million low income individuals receive Pell Grants each year through a rather flexible process. The use of CAAs should provide similar flexibility.

#### FEDERAL SUPPORT OF EMPLOYMENT SERVICES

*Question.* The Department acknowledges in their fiscal year 2009 budget justification a majority of States (35 States) have integrated WP Act services into their one-stop career centers, and only a minority of States are running separate and duplicative systems of employment services. Because of this alleged duplication of services in a small minority of States, the Department concluded all Employment Services funds should be eliminated. In the majority of States where services are already integrated, how will States continue to undertake employment service activities with-



out Federal support? What actions has DOL taken to support better integration in the minority States that have not achieved it?

Answer. Employment services will continue to receive Federal support, but through the Workforce Investment Act (WIA) One-Stop delivery system. The fiscal year 2009 budget request complements the administration's proposal for job training reform, which seeks to provide services in a more cost-effective way. This reform proposal would consolidate the Employment Service and WIA Adult, Dislocated Worker, and Youth funding streams into a single funding stream to be used for Career Advancement Accounts and employment services. In addition to eliminating the duplication between the Employment Service and WIA One-Stop delivery system that still exists in a number of States, it would replace the current siloed system of separate training programs, reduce administrative and overhead costs, and, most importantly, significantly increase the number of individuals who receive job training.

In addition, under our budget request, an estimated 10,878,000 participants would receive employment services. While this represents a smaller number of individuals receiving labor exchange services, it needs to be recognized that the recruitment process has changed and because much more is available to individual workers. The need for labor exchange services, such as resume posting and job search assistance, have largely been privatized and job seekers now have free access to Internet job boards that allow them to search for jobs and often post their resumes.

In order to strengthen program integration within the One-Stop Career Centers in States that have not achieved it, the Department offers technical assistance through tools such as Workforce<sup>3</sup>One, the Department's interactive communications and learning platform, which is designed to build the capacity of the workforce investment system, and Workforce Innovations, the Department's annual workforce system and partners conference.

The Department also uses the WIA/Wagner-Peyser Act State Plan process as a vehicle for States and workforce investment boards to set forth policy expectations for program integration. As part of a State plan modification required to be submitted by each State in 2007, States were specifically required to (1) describe policies in place to change or modify barriers to integration; (2) describe more efficient uses of administrative resources, such as eliminating duplicative facility and operational costs; (3) promote models or strategies for local use that support integration; (4) describe how services provided through One-Stop partners will be coordinated; and (5) describe how States will coordinate Wagner-Peyser Act funds to avoid duplication. The Department regularly monitors State WIA and Employment Service programs, including implementation of the integration strategies outlined in their State Plans, and offers technical assistance to States that require it.

#### OFFICE OF FOREIGN LABOR CERTIFICATION

*Question.* The Department's budget lacks any measures of program integrity with respect to program performance under the foreign labor certification program. This is a major management challenge identified by the DOL inspector General due to the existence of fraud and vulnerabilities in this program. What actions are being implemented in 2008 and are proposed in the 2009 to address this challenge? How will resources proposed in the 2009 budget request be used specifically to both improve the timeliness and increase the integrity of the certification process? What performance measures related to program integrity is the Department considering for this program?

Answer. These critical activities are an integral part of our ongoing application processing, and the Department will undertake a number of measures in fiscal year 2008 and fiscal year 2009 to strengthen the integrity of its employment-based immigration programs.

The following are actions that are being implemented in fiscal year 2008 or are planned for fiscal year 2009 based on resources contained in the fiscal year 2009 budget request:

- Establishment of a new Fraud Detection and Prevention Division within OFLC.
- Implementation of the most recent regulation amending the permanent labor certification program, "Labor Certification for the Permanent Employment of Aliens in the United States: Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity," which includes the authority to debar employers, attorneys, and or agents in certain specific circumstances.
- Linkage of the web-based technologies currently used in the Permanent Labor Certification Program (PERM) program to the H-1B database. This technology will add greater efficiency in confirming the status of employers filing applica-

tions and support both the timeliness and integrity of the PERM program. This action will begin in January 2009 as a pilot under a re-engineered Labor Condition Application form (ETA Form 9035).

- The PERM program application (ETA Form 9089) is expiring and has been significantly re-engineered based upon program experience over the past 3 years. This re-engineering will include changes to the database “behind” the actual application and its accompanying audit flags and triggers. The new system is set to be operational in January 2009.

Many of these integrity activities have the potential to lengthen the timeliness of case processing. However, the Department plans to monitor and review appropriate performance indicators both before and after the additional integrity functions are implemented.

Additionally, the Department has begun collecting new internal measures that will be used to track fraud and integrity efforts. These measures include the number of:

- Referrals or follow-ups by the Office of the Inspector General, the Department of Homeland Security, or others;
- Grand Jury testimonies or other witness testimonies;
- Targeted audits;
- Cases assigned to supervised recruitment;
- Program debarments initiated;
- Cease and desist orders issued; and
- User accounts disabled as a result of inappropriate usage.

#### OIG AUDIT ON CONSULTATION PROGRAM

*Question.* The budget proposes to increase funding for OSHA’s voluntary protection programs by \$5 million over the 2008 amount. However, DOL’s Inspector General found in a 2007 Audit Report that consultation program officials did not ensure the existence of interim protection for serious hazards before granting employers’ requests for additional time to correct them; OSHA considered serious hazards as “corrected in a timely manner” if employers completed corrective actions within 14 days of the latest correction due date agreed to by the consultant, rather than the original date corrective action is expected; and employers were not referred for enforcement action because they feared it would discourage employers from participating in this voluntary program.

What specific actions have been taken by DOL to address the findings and recommendations of the IG, including the recommendation related to the performance measure for “timely” correction of serious hazards with which OSHA disagrees? What has the impact been of these actions in terms of timely correction of serious hazards relative to the original due date; and referral of employers for enforcement for not correcting serious hazards?

*Answer.* The proposed increase of \$5.1 million in the Compliance Assistance budget activity for fiscal year 2009 represents inflationary increases and the restoration of funding and staffing eliminated by the across-the-board budget reductions in the fiscal year 2008 Consolidated Appropriation. This same approach was taken in all OSHA budget activities and does not represent programmatic increases for any specific program area.

In response to the audit by the Office of the Inspector General (OIG) on the consultation program, OSHA accepted all four of the recommendations contained in the report to tighten and ensure compliance with existing program requirements by State consultants. OSHA’s Assistant Secretary highlighted the OIG’s recommendations and reinforced the importance of adhering to the corresponding corrective actions being taken by the agency in a memorandum sent to OSHA Regional Administrators and Consultation Project Managers in October 2007.

With respect to the recommendations made by the OIG, OSHA added a provision in the Consultation Cooperative Agreements that required documentation of good faith efforts and all available interim protection measures being taken by employers whenever an extension was made for the correction of serious hazards. OSHA also added a provision to the Agreements in response to another OIG recommendation to require notification of the proper OSHA enforcement authority if an employer fails to take the action necessary to correct a serious hazard within the established time frame. In accordance with a third OIG recommendation, OSHA established a specific performance measure related to the initial correction due date of serious hazards. Finally, in response to the remaining recommendation for OSHA to provide guidance to States on acceptable types of interim protections, the October 2007 memorandum from OSHA’s Assistant Secretary contained information on the availability of resources and guidance for States in the selection of acceptable interim

protection. The OIG accepted all of OSHA's actions as being responsive to its recommendations.

#### ATTRACTING AND RETAINING STAFF

*Question.* Many Federal agencies are facing human capital changes associated with the retirement of the baby boom generation. Please describe OSHA's plan for attracting and retaining individuals with the skills and abilities OSHA needs to carry out its mission. What level of resources is proposed in fiscal year 2009 to carry out OSHA's plan?

*Answer.* OSHA has used training dollars and Departmental and Government-wide programs to assist in succession planning and leadership development. The agency has also successfully utilized the Department of Labor's Senior Executive Service candidates' program, Management Development and the Masters in Business Administration Fellows' program to invest in its human capital.

In addition, OSHA will continue to explore three levels of leadership development. Technical/Professional (GS-11/12 employees), Supervisory/Management (GS-13/14 employees), and Executive Development (GS-14/15 employees). The agency will also use programs for the hiring of summer interns to expose students and others to the mission of the agency.

The OSHA Training Institute (OTI) provides training and education in occupational safety and health for Federal and State compliance officers, and State consultants, by offering a series of basic, intermediate and advanced courses. To meet the continuing need for highly trained CSHOs, OSHA has developed a new training program for newly hired and experienced compliance personnel. The curriculum is designed to ensure that more comprehensive training is provided to compliance personnel so they are better equipped to apply technical information and skills in their work.

#### OSHA STANDARDS AND GUIDANCE ACTIVITY

*Question.* For each of the past 15 years, please provide the number of notices of proposed rulemaking, final rules, guidance/informational materials and SBREFA reviews conducted or issued by OSHA.

*Answer.* The three charts below provide the requested information:

#### OSHA FINAL AND PROPOSED RULES BY YEAR, 1993–2007

| Year       | Proposed rules <sup>1</sup>   | Final rules <sup>1</sup>  |
|------------|---|---|
| 1993 ..... | Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol and their Acetates (Glycol Ethers).  | Air Contaminants (remand)<br>Lead Exposure in Construction—Interim Rule<br>Permit-Required Confined Spaces  |
| 1994 ..... | Retention of Markings and Placards (DOT)<br>Permit Required Confined Spaces (general industry).<br>Respiratory Protection<br>Longshoring and Marine Terminals<br>Abatement Verification<br>Indoor Air Quality | Electrical Power Generation, Transmission, and Distribution; Electrical Protective Equipment<br>Reporting of Fatality or Multiple Hospitalization Incidents<br>Personal Protective Equipment for General Industry<br>Logging Operations<br>Occupational Exposure to Asbestos<br>Safety Standards for Fall Protection in the Construction Industry<br>Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment<br>Retention of DOT Markings, Placards, and Labels |
| 1995 ..... | Powered Industrial Truck Operator Training (general industry).  | Occupational Exposure to Lead<br>Basic Program Elements for Federal Employee Occupational Safety and Health Programs;<br>Record keeping Requirements<br>Basic Program Elements for Federal Employee Occupational Safety and Health Programs   |

## OSHA FINAL AND PROPOSED RULES BY YEAR, 1993–2007—Continued

| Year       | Proposed rules <sup>1</sup>   | Final rules <sup>1</sup>   |
|------------|---|--|
| 1996 ..... | Exit Routes (Means of Egress) .....<br>Miscellaneous Changes to General Industry and Construction Standards; Proposed Paperwork Collection, Comment Request for Coke Oven Emissions and Inorganic Arsenic.<br>Occupational Injury and Illness Recording and Reporting Requirements.<br>Powered Industrial Truck Operator Training (construction). | Personal Protective Equipment for Shipyard Employment (PPE)<br>Safety Standards for Scaffolds Used in the Construction Industry<br>Occupational Exposure to 1,3-Butadiene  |
| 1997 ..... | Occupational Exposure to Tuberculosis .....   | Occupational Exposure to Methylene Chloride<br>Reporting Occupational Injury and Illness Data to OSHA Abatement Verification<br>Longshoring and Marine Terminals   |
| 1998 ..... | Methylene Chloride .....<br>Dipping And Coating Operations (Dip Tanks)<br>Safety Standards for Steel Erection   | 29 CFR Parts 1910 and 1926 Standards Improvement (Miscellaneous Changes) for General Industry and Construction Standards; Paperwork Collection for Coke Oven Emission and Inorganic Arsenic<br>Methylene Chloride<br>Powered Industrial Truck Operator Training<br>Permit-Required Confined Spaces<br>Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes<br>Occupational Exposure to Asbestos<br>Respiratory Protection<br>Dipping and Coating Operations |
| 1999 ..... | Ergonomics Program .....<br>Nationally Recognized Testing Laboratories; Fees; Reduction of Public Comment Period on Recognition Notices.<br>Employer Payment For Personal Protective Equipment.   |  |
| 2000 ..... | None .....  | Nationally Recognized Testing Laboratories—Fees<br>Occupational Exposure to Cotton Dust  |
| 2001 ..... | None .....  | Safety Standards for Steel Erection<br>Occupational Exposure to Bloodborne Pathogens; Needlestick & Other Sharps Injuries<br>Occupational Injury and Illness Recording and Reporting   |
| 2002 ..... | Fire Protection in Shipyard Employment .....<br>Standards Improvement Project—Phase II  | Occupational Injury and Illness Recording and Reporting Requirements (hearing loss)<br>Exit Routes, Emergency Action Plans, and Fire Prevention Plans<br>Safety Standards for Signs, Signals, and Barricades   |
| 2003 ..... | Longshoring and Marine Terminals; Vertical Tandem Lifts.<br>Assigned Protection Factors<br>Controlled Negative Pressure REDON Fit Testing Protocol.<br>Commercial Diving Operations   | Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century  |

## OSHA FINAL AND PROPOSED RULES BY YEAR, 1993–2007—Continued

| Year       | Proposed rules <sup>1</sup>   | Final rules <sup>1</sup>   |
|------------|---|--|
| 2004 ..... | Occupational Exposure to Hexavalent Chromium<br>Steel Erection; Slip Resistance of Skeletal Structure Steel.<br>Electrical Standard (subpart 5)   | Commercial Diving Operations<br>Fire Protection in Shipyard Employment<br>Controlled Negative Pressure REDON Fit Testing<br>Protocol Fire Protection in Shipyard Employment<br>Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; Subpart I for Record keeping and Reporting Requirements<br>Updating OSHA Standards Based on National Consensus Standards; General, Incorporation by Reference; Hazardous Materials, Flammable and Combustible Liquids; General and Environmental Controls, Temporary Labor Camps; Hand and Portable Powered Tools and Other Hand Held Equipment, Guarding of Portable Powered Tools; Welding, Cutting, and Brazing, Arc Welding and Cutting; Special Industry, Sawmills<br>Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 |
| 2005 ..... | Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment (Subpart V).   | Standards Improvement Project—Phase II<br>Procedures for the Handling of Discrimination Complaints Under Section 6 of the Pipeline Safety Improvement Act of 2002<br>Roll-Over Protective Structures   |
| 2006 ..... | None .....  | Occupational Exposure to Hexavalent Chromium<br>Updating OSHA Standards Based on National Consensus Standards in OSHA's Standard for Fire Protection<br>Assigned Protection Factors<br>Occupational Exposure to Hexavalent Chromium (amendment to implement settlement agreement)  |
| 2007 ..... | Abbreviated Bitrex® Qualitative Fit-Testing Protocol.<br>General Working Conditions in Shipyard Employment.<br>Confined Spaces in Construction<br>Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment.<br>Explosives | Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of Six Federal Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as Amended<br>Electrical Standard (subpart S)<br>Employer Payment for Personal Protective Equipment<br>Updating OSHA Standards Based on National Consensus Standards  |

<sup>1</sup> Proposed and final rules include traditional health and safety standards, rules concerning Federal agency standards, anti-discrimination, and the process by which OSHA recognizes Nationally Recognized Testing Laboratories (NRTLs).

Proposed and final rules do not include rules that are purely administrative, grants, technical amendments, corrections notices, withdrawals, changes to State plan and consultation regulations, and procedural notices such as extensions of comment periods, hearing notices, and extensions of compliance dates. They also do not include alternate standards for Federal agencies, variance application notices, and the recognition of specific NRTLs.

Direct final rules are published with a concurrent proposed rule. For this table, both notices are counted as one final rule.

**SUMMARY OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) SMALL BUSINESS  
ADVOCACY REVIEW PANELS MANDATED BY THE SMALL BUSINESS REGULATORY ENFORCEMENT  
FAIRNESS ACT OF 1996**

| Rule title  | Date convened | Date completed | Published NPRM <sup>1</sup> | Final rule published |
|---|---------------|----------------|-----------------------------|----------------------|
| Tuberculosis .....  | 09/10/96      | 11/12/96       | 10/17/97                    | .....                |
| Safety & health program rule .....                              | 10/20/98      | 12/19/98       | .....                       | .....                |
| Ergonomics program standard .....                               | 03/02/99      | 04/30/99       | 11/23/99                    | 11/14/00             |
| Confined spaces in construction .....                           | 09/26/03      | 11/24/03       | 11/28/07                    | .....                |
| Electric power generation, transmission, and distribution ..... | 04/01/03      | 06/30/03       | 06/15/05                    | .....                |
| Occupational exposure to Crystalline Silica .....               | 10/20/03      | 12/19/03       | .....                       | .....                |
| Occupational exposure to Hexavalent Chromium .....              | 01/30/04      | 04/20/04       | 10/04/04                    | 02/28/06             |
| Cranes and derricks in construction .....                       | 08/18/06      | 10/17/06       | .....                       | .....                |
| Occupational exposure to Beryllium .....                        | 09/17/07      | 01/15/08       | .....                       | .....                |

<sup>1</sup> Notice of Proposed Rulemaking (NPRM) published in the Federal Register.

A number of guidance products were issued by OSHA in the 1990s associated with rulemaking efforts and include such items as booklets and brochures that summarize employer responsibilities as well as Hazard Information Bulletins (now called Safety and Health Information Bulletins or SHIBs). OSHA has made an effort to compile a comprehensive listing of its work products responsive to this question but it is difficult to ensure a completely accurate catalogue of these products since no itemized database was ever maintained prior to 2005. Over the past 15 years, the issuance of electronic guidance has become a much more common and effective way to disseminate information than publishing guidance in print. Virtually all current OSHA compliance assistance products are posted on OSHA's public Web site at <http://www.osha.gov/pls/publications/publication.html>. OSHA began a compliance assistance database in 2005 to track non-policy guidance from its national office (this excludes such items as enforcement compliance directives, which are often used by employers as guidance for how to interpret standards). The following table includes guidance that has been issued by OSHA's national office since 2005.

| Product name   | Type  |
|--|---|
| 29 CFR Part 1910. Subpart T, Commercial Diving Operations Directive ....                       | Directive (with outreach component)           |
| Abrasive Blasting in Shipyards .....   | Guidance Document                             |
| Aerial Lifts .....   | Fact Sheet                                    |
| Aerial Lifts Card .....  | Card  |
| All About OSHA .....   | Booklet                                       |
| All Terrain Vehicles .....   | Safety and Health Information Bulletin (SHIB) |
| Application of HAZWOPER to Worksite Response and Cleanup Activities ...                        | Guidance Document                             |
| Asbestos .....   | Fact Sheet                                    |
| Asbestos-Automotive Brake and Clutch Repair Work .....   | Safety and Health Information Bulletin (SHIB) |
| Avian Flu Quick Card: Animal Handlers .....  | Card  |
| Avian Flu Quick Card: Food Handlers .....  | Card  |
| Avian Flu Quick Card: General Precautions .....  | Card  |
| Avian Flu Quick Card: Health Care Workers .....  | Card  |
| Avian Flu Quick Card: Laboratory Workers .....   | Card  |
| Avian Flu Quick Card: Poultry Workers .....  | Card  |
| Avian Flu fact sheet .....   | Fact Sheet                                    |
| BLSR Hazards Associated with E & P Waste Liquids .....   | Safety and Health Information Bulletin (SHIB) |
| Basic Steel Products .....   | Safety and Health Topics Page                 |
| Best Practices for the Safe Use of Glutaraldehyde in Health Care .....                         | Guidance Document                             |
| Business Case for Safety .....   | Safety and Health Topics Page                 |
| Carbon Monoxide Card .....   | Card  |
| Chain Saws .....   | Fact Sheet                                    |
| Chain Saws Card .....  | Card  |
| Chippers Card .....  | Card  |
| Cleaning Industry .....  | Safety and Health Topics Page                 |
| Cleanup Hazards .....  | Fact Sheet                                    |
| Combustible Dust .....   | Safety and Health Topics Page                 |
| Combustible Dust Explosions .....  | Fact Sheet                                    |
| Combustible Dust in Industry: Preventing and Mitigating the Effects of<br>Fire and Explosions. | Safety and Health Information Bulletin (SHIB) |
| Concrete and Concrete Products: Manufacturing and Construction .....                           | Safety and Health Topics Page                 |
| Confined Spaces Card .....   | Card  |

| Product name  | Type  |
|---|---|
| Confined Spaces Poster .....  | Poster  |
| Confined Spaces, Atmospheric Testing Card .....   | Card  |
| Construction eTool, Spanish translation .....   | eTool   |
| Container Gantry Crane Radio Communication on Marine Terminals .....                              | Fact Sheet                                    |
| Crane Safety Card .....   | Card  |
| Critter fact sheet: Black Widows .....  | Fact Sheet                                    |
| Critter fact sheet: Brown Recluse Spiders .....   | Fact Sheet                                    |
| Critter fact sheet: Cottonmouth (Water Moccasin) .....  | Fact Sheet                                    |
| Critter fact sheet: Fire Ants .....   | Fact Sheet                                    |
| Decontamination, General .....  | Fact Sheet                                    |
| Decontamination, General (Card) .....   | Card  |
| Demolition Safety Tips .....  | Fact Sheet                                    |
| Demolition Safety Tips Card .....   | Card  |
| Downed Electrical Wires .....   | Fact Sheet                                    |
| Drop-in Article: Lay press on landscaping safety for summer jobs among teens.                     | Other   |
| Drop-in Article: Protect Your Working Teen from Machinery Hazards .....                           | Other   |
| Drop-in Article: Protect Your Working Teen from Pesticides .....                                  | Other   |
| Drop-in Article: Protect Your Working Teen from Strains and Sprains .....                         | Other   |
| Drop-in Article: Protect Your Working Teen from Summer Sun and Health Illnesses.                  | Other   |
| Electricity, Working Safely With .....  | Fact Sheet                                    |
| Electricity, Working Safely With (Card) .....   | Card  |
| Entanglement Hazards of Augur Drilling .....  | Safety and Health Information Bulletin (SHIB) |
| Ergonomic Guidelines for Shipyards .....  | Guidance Document                             |
| Ergonomic Solutions for Electrical Contractors: Installation and Repair Module.                   | eTool   |
| Ergonomic Solutions for Electrical Contractors: Prefabrication Module .....                       | eTool   |
| Ergonomics Guidelines for Shipyards .....   | Guidance Document                             |
| Ergonomics for the Printing Industry: Flexography Module .....                                    | eTool   |
| Ergonomics for the Printing Industry: Lithography Module .....                                    | eTool   |
| Ergonomics for the Printing Industry: Screen Printing Module .....                                | eTool   |
| Fire Department S&H Topics Page .....   | Safety and Health Topics Page                 |
| Fire Service Features of Buildings and Fire Protection Systems .....                              | Booklet                                       |
| First Aid Best Practices .....  | Guidance Document                             |
| Flavorings-Related Lung Disease .....   | Safety and Health Topics Page                 |
| Flood Cleanup .....   | Fact Sheet                                    |
| Four Leading Construction Hazards .....   | Card  |
| Four Leading Construction Hazards Card .....  | Card  |
| Frequently Asked Questions for OSHA's Injury and Illness Recordkeeping Rule for Federal Agencies. | FAQs  |
| Fungi Hazards and Flood Cleanup .....   | Fact Sheet                                    |
| Globally Harmonized System of Classification and Labeling of Chemicals (GHS) Guidance Document.   | Guidance Document                             |
| Guardrail System for Tunnel Form Stripping Platform .....   | Safety and Health Information Bulletin (SHIB) |
| Guidance for Hazard Determination .....   | Guidance Document                             |
| Guidance on Preparing Workplaces for a Potential Pandemic Influenza ....                          | Guidance Document                             |
| Guidance on Safe Sling Use .....  | Guidance Document                             |
| Hand Hygiene and Gloves .....   | Fact Sheet                                    |
| Hand Hygiene and Gloves Card .....  | Card  |
| Handling Human Remains .....  | Fact Sheet                                    |
| Hazard Communication Guidance for Diacetyl and Certain Food Flavorings Containing Diacetyl.       | Guidance Document                             |
| Hazards Associated With Transporting Granite and Marble Slabs .....                               | Safety and Health Information Bulletin (SHIB) |
| Hazards of Manually Lifting Balloon Framed Walls .....  | Safety and Health Information Bulletin (SHIB) |
| Hazards of Manually Lifting Balloon Framed Walls (Spanish translation).                           | Safety and Health Information Bulletin (SHIB) |
| Hazards of Unintended Movement of Dump Truck Body Beds .....                                      | Safety and Health Information Bulletin (SHIB) |
| Hazards of Wood Chippers .....  | Safety and Health Information Bulletin (SHIB) |
| Hazards with Hand-Feeding Bar Straightening Machines .....  | Safety and Health Information Bulletin (SHIB) |
| Health Effects of Hexavalent Chromium .....   | Fact Sheet                                    |
| Hearing Conservation Issues for the Hearing Impaired .....  | Safety and Health Information Bulletin (SHIB) |
| Hearing Loss in Construction Toolbox Training .....   | Guidance Document                             |
| Heat Stress .....   | Fact Sheet                                    |
| Hexavalent Chromium FAQs .....  | FAQs  |
| Hexavalent Chromium Fact Sheet(s) .....   | Fact Sheet                                    |

| Product name  | Type  |
|---|---|
| Hexavalent Chromium Small Entity Compliance Guide .....   | Guidance Document                             |
| Hexavalent Chromium fact sheet .....  | Fact Sheet                                    |
| Hospitals and Community Emergency Response—What You Need to Know.   | Booklet                                       |
| Hydrogen Sulfide .....  | Fact Sheet                                    |
| Hydrogen Sulfide Card .....   | Card  |
| ICS Survival Sheet .....  | Other   |
| Inspection Guidelines for the Chromium (VI) Standards .....   | Directive (with outreach component)           |
| Inspection Procedures for 29 CFR 19.10.120 and 1926.65(q): Emergency Response to Hazardous Substance Releases.                      | Directive (with outreach component)           |
| Latex SHIB .....  | Safety and Health Information Bulletin (SHIB) |
| Lead Hazards .....  | Fact Sheet                                    |
| Lead in Construction .....  | Fact Sheet                                    |
| Lead in Construction Card .....   | Card  |
| Longshoring and Marine Terminal .....   | Directive (with outreach component)           |
| Machine Guarding eTool: Thermoforming Module .....  | eTool   |
| Marine Terminal Fall Protection for Personnel Platforms .....   | Fact Sheet                                    |
| Mass Care Shelter Workers Checklist .....   | Guidance Document                             |
| Mold .....  | Fact Sheet                                    |
| Mold Card .....   | Card  |
| Motor Vehicle Safety Guidance for Employers to Reduce Motor Vehicle Crashes.  | Brochure                                      |
| OSHA Guidance Update for Protecting Workers From Avian Flu (Influenza).   | Guidance Document                             |
| OSHA Poster .....   | Poster  |
| Occupational Exposure to Ethylene Oxide .....   | Guidance Document                             |
| Oil and Gas Well Drilling, Servicing and Storage: Storage Tank Module ...   | Safety and Health Topics Page                 |
| Overhead Launching Gantry Crane .....   | Safety and Health Information Bulletin (SHIB) |
| Pandemic Influenza Preparedness and Response Guidance for Healthcare Workers and Healthcare Employers.                              | Guidance Document                             |
| Personal Protective Equipment: Construction .....   | Card  |
| Pest Control Pyrotechnics .....   | Card  |
| Portable Generators .....   | Fact Sheet                                    |
| Portable Generators Card .....  | Card  |
| Portable Generators: Grounding .....  | Fact Sheet                                    |
| Portable Ladder Safety .....  | Card  |
| Portable Ladder Safety Card .....   | Card  |
| Potential Flammability Hazard Associated With Bulk Transportation of Oilfield Exploration and Production Waste Liquid.              | Safety and Health Information Bulletin (SHIB) |
| Preparing and Protecting Security Personnel in Emergencies .....  | Guidance Document                             |
| Preventing Falls .....  | Fact Sheet                                    |
| Preventing Falls Card .....   | Card  |
| Preventing Mold-Related Problems in the Indoor Workplace: A Guide for Building Owners, Managers, and Occupants.                     | Guidance Document                             |
| Preventing the Uncontrolled Release of Anhydrous Ammonia at Loading Station.  | Safety and Health Information Bulletin (SHIB) |
| Psychological First Aid Materials and Information .....   | Other Web Products                            |
| Quick Start: Construction Module .....  | Other Web Products                            |
| Quick Start: Health Care Module .....   | Other Web Products                            |
| Recordkeeping Handbook .....  | Guidance Document                             |
| Rescue of Animals (Dogs) by Disaster Relief Personnel .....   | Card  |
| Respiratory Disease Among Employees in Microwave Popcorn Processing Plants.   | Safety and Health Information Bulletin (SHIB) |
| Respiratory Protection Card .....   | Card  |
| Respiratory Protection Guidance for Employers and Workers .....   | Safety and Health Information Bulletin (SHIB) |
| Rodents, Snakes, and Insects Card .....   | Card  |
| Safe Driving Quick Card .....   | Card  |
| Safeguarding Equipment and Protecting Workers from Amputations .....  | Booklet                                       |
| Safety Hazards of Overloaded Cable Trays .....  | Fact Sheet                                    |
| Safety Pays Advisor .....   | eTool   |
| Safety and Health Cheddist for Community Service Organizations Engaged in Disaster Recovery Demolition and Construction Activities. | Guidance Document                             |
| Scaffold Quick Card (#2): Supported Scaffold Inspection Tips .....  | Card  |
| Scaffolding (Supported) Card .....  | Card  |
| Search and Rescue .....   | Fact Sheet                                    |



| Product name   | Type  |
|--|---|
| Seasonal Influenza Vaccinations—Important Protection for Healthcare Workers.             | Fact Sheet                                    |
| Shipyard .....   | Directive (with outreach component)           |
| Shipyard Employment: Fire Protection Module .....  | eTool   |
| Shipyard eTool: Barge Cleaning module .....  | eTool   |
| Shipyard eTool: Best Practices for Marine Hanging Staging Module .....                   | eTool   |
| Shipyard eTool: Ship Breaking module .....   | eTool   |
| Shipyard eTool: Ship Building module .....   | eTool   |
| Silicosis Card .....   | Card  |
| Teen Worker Bookmark (OSHA/WHDD) .....   | Other   |
| Tips for Improving Workplace Safety and Health .....                                     | Fact Sheet                                    |
| Traffic Safety in Marine Terminals .....   | Guidance Document                             |
| Tree Care Industry .....   | Safety and Health Topics Page                 |
| Tree Trimming .....  | Fact Sheet                                    |
| Tree Trimming Card .....   | Card  |
| Trenching and Excavation Safety .....  | Fact Sheet                                    |
| Use of Blunt Suture Needles to Decrease Percutaneous Injuries to Surgical Personnel.     | Safety and Health Information Bulletin (SHIB) |
| Use of Blunt Tip Suture Needles to Decrease Percutaneous Injuries to Surgical Personnel. | Safety and Health Information Bulletin (SHIB) |
| West Nile Virus .....  | Fact Sheet                                    |
| West Nile Virus Card .....   | Card  |
| Whistleblower Protection for Employees in the Aviation Industry .....                    | Fact Sheet                                    |
| Whistleblower Protection for Employees in the Transportation Sector .....                | Fact Sheet                                    |
| Whistleblower Protection for Employees of Public Transportation Agencies.                | Fact Sheet                                    |
| Whistleblower Protection for Railroad Employees .....                                    | Fact Sheet                                    |
| Whistleblower Protection for Trucking Employees .....                                    | Fact Sheet                                    |
| Whistleblower Protections and the Environment .....                                      | Fact Sheet                                    |
| Work Zone Safety .....   | Fact Sheet                                    |
| Work Zone Safety Card .....  | Card  |
| Worker Protection Matrix for Hurricane Response and Recovery Workers ...                 | eTool   |
| Working Outdoors in Warm Climates .....  | Fact Sheet                                    |
| Young Worker Fact Sheet (Update) .....   | Fact Sheet                                    |

#### ENHANCED ENFORCEMENT PROGRAM

**Question.** For each of the past 5 years, please provide the number of enhanced enforcement program cases and the associated number of major enforcement outcomes.

**Answer.** If an inspection is classified as an Enhanced Enforcement Program (EEP) case, it may receive additional enforcement efforts such as: an enhanced follow-up inspection to verify that both the cited conditions and other, similar, hazards have been corrected; in cases that can be settled, more comprehensive abatement requirements in the settlement agreements; and potential Federal court contempt enforcement of the citations or settlement provisions pursuant to Section 11(b) of the Occupational Safety and Health Act. In addition, other workplaces of the employer may be inspected through the following mechanisms:

**SST-Related Inspections in General Industry.**—When other establishments of the same corporate employer (other than construction employers) are included on OSHA's current Site-Specific Targeting (SST) primary or secondary inspection lists, they will be moved to the current SST inspection cycle.

**Related Inspections.**—Additional establishments of the same employer in both general-industry and construction may be inspected if there is evidence of showing that the safety and health problems identified in the initial EEP inspection are part of a broader company-wide problem.

The following chart shows data for OSHA's original Enhanced Enforcement Program, which was initiated October 1, 2003.

| Fiscal year | EEP 1 inspections | Follow-up inspections | SST-related inspections | General industry-related inspections | Construction-related inspections | Enhanced settlement agreements | 11(b) court actions to SOL |
|-------------|-------------------|-----------------------|-------------------------|--------------------------------------|----------------------------------|--------------------------------|----------------------------|
| 2004 .....  | 314               | 54                    | 1                       | 2                                    | 10                               | 60                             | 5                          |
| 2005 .....  | 589               | 108                   | 19                      | 9                                    | 7                                | 88                             | 2                          |
| 2006 .....  | 473               | 128                   | 8                       | 12                                   | 12                               | 49                             | 2                          |

| Fiscal year             | EEP 1 inspections | Follow-up inspections | SST-related inspections | General industry-related inspections | Construction-related inspections | Enhanced settlement agreements | 11(b) court actions to SOL |
|-------------------------|-------------------|-----------------------|-------------------------|--------------------------------------|----------------------------------|--------------------------------|----------------------------|
| 2007 .....              | 717               | 174                   | 18                      | 3                                    | 6                                | 84                             | 1                          |
| 2008 <sup>1</sup> ..... | 277               | 46                    | 8                       | 4                                    | 1                                | 33                             | 1                          |
| Totals .....            | 2,370             | 510                   | 54                      | 30                                   | 36                               | 314                            | 11                         |

<sup>1</sup> From 10-1-07 thru 5-22-08.

On January 1, 2008, OSHA issued its revised Enhanced Enforcement Program. The revision changed the EEP criteria to place greater emphasis on those employers that have a history of violations with OSHA (including history with State Plans).

Because there are significant differences between the original EEP (EEP 1) program as implemented in October 2003, and the revised EEP (EEP 2) program initiated in January 2008, the data from the two programs are not directly comparable and are reported separately.

The following chart shows data for OSHA's revised Enhanced Enforcement Program, which was initiated January 1, 2008:

| Fiscal year             | EEP 2 inspections (number of fatalities) | Follow-up inspections | SST-related inspections | General industry-related inspections | Construction-related inspections | Enhanced settlement agreements | 11(b) court actions to SOL |
|-------------------------|--|-----------------------|-------------------------|--------------------------------------|----------------------------------|--------------------------------|----------------------------|
| 2008 <sup>1</sup> ..... | <sup>1</sup> 13                          | .....                 | .....                   | .....                                | .....                            | .....                          | .....                      |
| Total .....             | <sup>1</sup> 13                          | .....                 | .....                   | .....                                | .....                            | .....                          | .....                      |

<sup>1</sup> From 1-1-08 thru 5-22-08.

#### WHISTLEBLOWER ACTIVITY

*Question.* What is OSHA's experience to date in terms of workload numbers and time involved in carrying out new whistleblower/anti-discrimination protections provided for in recent legislation, such as the 9/11 Commission bill? What does the budget assume for these workloads in fiscal year 2009?

*Answer.* To date, cases filed under the Federal Rail Safety Act (FRSA) and the National Transit Security Systems Act (NTSSA), the whistleblower provisions of which were assigned to OSHA in the Implementing Recommendations of the 9/11 Commission Act of 2007, constitute less than 2 percent of OSHA's caseload. Based on past experience, the cases can be expected to increase as public awareness of the laws increase. The new statutes require a great deal of deliberation, as the agency works to address novel jurisdictional and coverage issues, develops implementing regulations, establishes working relationships with the agencies that enforce the substantive provisions of those laws, and develops and plans to deliver comprehensive training to investigators and supervisors.

OSHA's fiscal year 2009 budget includes a total workload estimate of 2,055 whistleblower-case investigations and a discussion of the challenges of administering these new whistleblower statutes, but individual workload estimates are not established for each statute administered by the agency.

#### OSHA INFORMATION SYSTEM

*Question.* Please provide more detail on the major steps, timeline, and costs for fiscal year 2008 and 2009 associated with the OSHA Information System. What are the outcomes expected to be achieved under this new information system?

*Answer.* When fully implemented, OSHA's Information System (OIS) will replace the agency's current data system, the Integrated Management Information System (IMIS). The current project timetable for the OIS schedules full deployment by the end of fiscal year 2010. During fiscal year 2008 and 2009, work will be continued in three major areas: system design, a pilot to test approximately 20 percent of the total function for the new system, and completion of system development. OSHA estimates that OIS will cost \$24 million to fully implement by September 30, 2010.

When OIS is fully implemented, the agency will have an enhanced ability to more quickly identify local trends unique to States or counties, and to predict emerging trends such as new hazardous chemicals affecting workers. Unlike the current system, the analytical tools employed by OIS will have the capacity to recognize and detect events and occurrences that are unique to specific industry sectors and geographical areas, allow improved targeting and utilization of resources for both en-

forcement and compliance assistance activities, and more accurately set and monitor progress towards reaching performance targets.

#### SUSAN HARWOOD TRAINING GRANTS

*Question.* The budget once again proposes to eliminate funding for the Susan Harwood Training grants and Institutional Competency Building grants programs. What proportion of the grantees under these programs met their performance goals, based on a review of the most recent grant periods for which data are available?

*Answer.* The most recent period for which Susan Harwood Training grant data are available for grantees that completed their programs is fiscal year 2007. This activity reflects grants awarded in fiscal year 2006. The data indicate that 82 percent of Susan Harwood Training grantees met or exceeded their performance goals. Current Institutional Competency Building grantees are operating several years beyond the initial period designed for their development and 100 percent of them met or exceeded their performance goals originally established for them.

#### RECORDKEEPING AUDITS

*Question.* During the budget hearing, Secretary Chao stated that OSHA completes inspections of employer recordkeeping of workplace injuries. Please describe specifically the steps involved in these recordkeeping audits. How many have been done for each of the last 5 years and what specifically did these audits find? Do these audits include a specific and effective attempt to identify injury cases missing from the employer logs? What follow-up actions were taken in response to findings of inaccurate logs?

*Answer.* OSHA collects injury and illness data from a universe of approximately 130,000 employers in high-rate industries for the purpose of identifying individual high-rate establishments for potential OSHA interventions. The program for conducting recordkeeping audits involves (1) onsite visits to a statistically valid sample of establishments that submitted data to OSHA; (2) a sample of employees within the establishment selected for inspection; (3) a comprehensive review of documentation concerning any injuries or illnesses for each employee file selected; and (4) a comparison of recordable cases discovered from the employee files compared with the establishment's original OSHA 300 log to determine if any cases discovered were (or were not) properly recorded on the log. The audit program also entails (1) an interview of the recordkeeper; (2) comparison of the log summary data found onsite and the data the employer submitted to OSHA for the agency's Data Initiative; and (3) employee interviews.

The following table reflects the number of audits completed over the past 5 years and their findings:

| Year       | Reference year data | Number of audits | Percent of establishments classified with accurate recording for total recordable cases (at-or-above the 95 percent threshold of accuracy) |
|------------|---------------------|------------------|--|
| 2003 ..... | 2001                | 246              | 95.53  |
| 2004 ..... | 2002                | 252              | 94.84  |
| 2005 ..... | 2003                | 251              | 92.43  |
| 2006 ..... | 2004                | 256              | 95.70  |
| 2007 ..... | 2005                | 245              | ( <sup>1</sup> )   |

<sup>1</sup> Analysis pending.

Accuracy data pertain to the number of establishments recording correctly and does not attempt to estimate the actual number of instances where cases may have been under or over reported. The audit protocol was specifically designed to detect unrecorded cases as well as mis-recorded and over-recorded cases. This is done through a comprehensive onsite review of multiple record sources including medical records, workers compensation records, first-aid logs, and employee interviews. The sampling methodology was independently developed by the National Opinion Research Center at the University of Chicago to allow estimates of recordkeeping accuracy. Since these audits are conducted as part of an OSHA inspection, violations discovered are cited and require abatement by the employer.

## CRANES AND DERRICKS STANDARD

*Question.* Nearly 4 years after labor and management reached consensus on a safety standard for cranes and derricks, a proposed rule has yet to be issued. In the meantime, workers continue to be hurt and killed. On March 6 workers and one member of the public was killed in a crane collapse in New York City. Several days later two more workers lost their lives in a crane collapse in Miami, Florida. What is OSHA's timeline for completing action on this issue? Why has there been such a delay in moving forward based on the consensus reached 4 years ago?

*Answer.* The cranes and derricks proposed rule will comprehensively address the hazards associated with the use of cranes and derricks in construction. As a consequence, this complex rule has required extensive time to conduct the required analyses and reviews. Pursuant to requirements enacted by Congress, OSHA is required to conduct a regulatory flexibility analysis, small business review, and paper-work burden analysis of the proposed rule. In addition, OSHA is required to explain the basis and purpose of the rule. OSHA anticipates issuing a notice of proposed rulemaking for this standard in Fall 2008.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

*Question.* As you may know, I have long been involved in maximizing retirement security for Americans. I am deeply concerned by the growing shift from secure defined benefit pensions to 401(k) plans. That is why I appreciate the Department's focus on fees associated with these plans, and as you know I have also introduced legislation on this critical issue. Studies show a small percentage increase in fees can have a dramatic impact on overall retirement security. I have a couple of questions for you on this front.

Clearly, there are a number of parties that need to be made aware of plan fees. Of most interest to the press and public is the information that participants receive, since most plans are participant-directed and they pay most of the fees. However, the plan sponsor actually bears fiduciary responsibility in selecting plans that best serve the participants' interests and as they select plan options with reasonable fees, the participant ends up being in the happy position of choosing from several favorable options. And finally, in order to keep an eye on these plans, the Government needs information on fees.

So far the Department has issued regulations on the information that the Government and plan sponsors receive—when do you plan to issue regulations on the information that participants get?

*Answer.* The Department has developed proposed regulations concerning the disclosure of plan fee and expense information to plan participants and beneficiaries which are now in the final stages of review. We anticipate publication of our proposal in the Federal Register in early summer.

## DISCLOSURE TO PLAN SPONSOR REGULATIONS

*Question.* With regard to the proposed regulation on disclosure to plan sponsors, I have sent a comment letter detailing all of my concerns with the proposed rule. I have also heard from plan sponsors and providers who have commented to DOL about this rule.

Can you discuss how these comments are being integrated and what the timeline currently is anticipated in issuing a final rule?

*Answer.* In December 2007, the Department published a proposed regulation and related prohibited transaction class exemption concerning the disclosure of service provider compensation and conflicts of interest information to plan sponsors. To date, the Department has received over 100 public comments on this regulatory initiative. Further, the Department conducted 2 days of administrative hearings on March 31 and April 1 of this year to further develop the public record and to provide Department representatives an opportunity to obtain additional information concerning the many issues raised by public commenters.

The Department currently is reviewing these comments, as well as testimony presented at the public hearings, and analyzing the proposed regulation and class exemption in light of the legal, technical, and practical issues that have been raised. We have been and continue to pursue the goal of transparency for plan sponsors who are engaging service providers and selecting investment products for their plans, and we intend to finalize this regulatory initiative by November 2008.

## ADMINISTRATIVE FEES

*Question.* I want to clear up specifically a debate that seems to be raging about bundled services. I keep hearing that it doesn't matter if plan sponsors understand

all of the various kinds of fees that participants are being charged as long as the overall level is competitive. However, that doesn't take into account things like whether some costs are reasonable over time. For example, the cost per participant to administer a plan for 100 people is going to be significantly higher than the per participant costs for a plan covering five times as many people.

So how is a plan sponsor to gauge the reasonableness of administrative fees as their plan grows if they only know the overall fee level that includes asset-based fees and investment fees? Don't you think that insuring reasonable administrative costs is inherent to fiduciary responsibility?

Answer. ERISA prohibits the payment of fees to service providers unless the plan pays no more than reasonable compensation. Plan fiduciaries have an obligation to make sure that the plan is getting its money's worth whenever it makes an investment or enters into a contract with a service provider. To do so, the fiduciary needs to understand how much the plan is going to pay and what it is going to get in return. In order to make a judgment about whether fees are reasonable, the fiduciary needs to understand precisely what services are being rendered, the quality of those services, and whether the fees are structured in such a way that the interests of the service provider run counter to the interest of the plan.

When administrative and investment fees are "bundled" together, for instance when they both are assessed through asset-based fees, a fiduciary needs to have the information necessary to make these assessments. Whether or not the fiduciary needs to look at the pricing of a particular component, for example administrative expenses, is likely to depend on the facts and circumstances. For example, in many instances, it may be relatively easy for the fiduciary to assess the benefits of purchasing each service separately or in a bundle simply by looking at the competitor's prices for the individual services. In such cases, if the contract does not give the service provider any improper incentives, the aggregate price may be all that matters to the plan. The fact that fees are bundled does not necessarily mean that the services and fees are hidden or that the plan is paying more for bundled services than if services were selected individually.

#### PENSION BENEFITS GUARANTY CORPORATION

*Question.* I am very interested in movement by the PBGC as mentioned in the fiscal year 2009 budget request to modify investment policy more aggressively to reduce the long-term shortfall in obligations. I ask that you keep Congress fully apprized of such strategies as you move forward. I see that there could be some benefit in this approach, as reserves can be shored up without further increasing the strain on employer contributions, which in turn strains their ability to provide guaranteed benefit plans to their workers. However, this must be balanced with the investment policy that will not increase risk unduly. On a related note, I am hearing rumors of activity by the PBGC to examine whether to allow third-party financial institutions to purchase assets in frozen pension plans. I find this concept deeply troubling. ERISA of course requires that plan fiduciaries manage pensions solely in the interest of the participant. I fail to understand how adding another profit motive to the equation is accomplishing that requirement. Furthermore, I believe that an employer has more interest in protecting participant assets than a third party financial institution.

Can you please comment on the PBGC's activity with regard to examining such plan asset sales?

Answer. The three ERISA agencies have been approached by several financial institutions interested in assuming sponsorship of frozen pension plans from employers. The various proposals would transfer sponsorship and all aspects of plan administration and plan asset investment from the employer to a newly created subsidiary of the financial institution, which would become the new plan sponsor. Because the proposals involve ongoing plans that will not terminate, primary regulatory responsibility for these proposals rests with the Internal Revenue Service and Department of Labor. The IRS is actively examining whether such transactions are consistent with the requirements of the Internal Revenue Code. PBGC has asked the financial institutions to clarify the possible risks and benefits to plan participants and the pension insurance program.

#### WAGE AND HOUR DIVISION

*Question.* Please provide the information requested in last year's 2008 Senate committee report related to the misclassification of workers and enforcement efforts in low-wage industries.

Answer. ESA is working to finalize the requested report, and expects to transmit the full report to the Congress in the near future.

*Question.* Staffing for the wage and hour division has fallen by 20 percent from 2001 to 2008. What has been the impact of this reduction on the mission of the wage and hour division?

*Answer.* The Wage and Hour Division's (WHD) mission is to promote and to achieve compliance with labor standards to protect and to enhance the welfare of the Nation's workforce. The President's fiscal year 2007 budget requested an additional increase of \$6 million to hire 39 FTE for WHD. The fiscal year 2008 budget requested an additional increase of \$5 million to hire 36 FTE for WHD. The fiscal year 2009 budget request includes funding to hire an additional 75 Wage and Hour enforcement staff to target resources on industries and workplaces that employ low-wage, immigrant workers.

As has long been its mission, WHD is committed to protecting workers, particularly in low-wage industries. To make the best use of resources, WHD employs complementary strategies—enforcement, compliance assistance, and partnerships—that strengthen the agency's ability to protect the employment rights of workers in low-wage industries and to promote compliance by covered employers.

We believe the ultimate impact of the resources we are given is shown in the enforcement results that WHD has achieved, rather than in the number of FTEs. In fiscal year 2007, WHD recovered more than \$220 million in back wages, the largest amount ever, for over 341,600 employees, the second largest number since 1993. Since fiscal year 2001, WHD has recouped more than \$1.25 billion for nearly 2 million workers.

*Question.* For each of the past 10 years, what share of wage and hour resources has been dedicated to self-directed investigations versus employee complaint-initiated actions?

*Answer.* WHD has the following data for the past 10 years relating the percent of concluded cases that are self-directed and the percent of concluded cases that are initiated as a result of a complaint.

| Fiscal year | Self-directed cases as a percent of concluded cases | Complaint-based cases as a percent of concluded cases |
|-------------|---|---|
| 1998 .....  | 29.1  | 70.9  |
| 1999 .....  | 27.9  | 72.1  |
| 2000 .....  | 27.5  | 72.5  |
| 2001 .....  | 30.7  | 69.3  |
| 2002 .....  | 25.7  | 74.3  |
| 2003 .....  | 26.7  | 73.3  |
| 2004 .....  | 23.4  | 76.6  |
| 2005 .....  | 22.6  | 77.4  |
| 2006 .....  | 22.7  | 77.3  |
| 2007 .....  | 23.3  | 76.7  |

*Question.* What has the impact been on wage and hour's ability to respond effectively to employee wage and hour complaints?

*Answer.* In fiscal year 2007, WHD investigators concluded complaint cases in 97 days on average. This is less than the 108 average numbers of days that it took to conclude complaint cases in fiscal year 2003. WHD has also improved the effectiveness of its complaint intake strategies and this has increased the percent of WHD complaint investigations that find violations of WHD laws. In fiscal year 2003, 72 percent of WHD complaint investigations, excluding conciliations, found violations. By the end of fiscal year 2007, 79 percent of complaint investigations found violations.

#### BUDGET JUSTIFICATION OF SPENDING FOR SPECIAL PERSONAL SERVICES PAYMENTS AND OTHER PERSONNEL COMPENSATION

*Question.* The Employment Standards Administration (ESA) budget justification (page ESA-19 for 2009 and page ESA-17 for 2008) shows a significant increase in the 2008 estimate of spending for special personal services payments and other personnel comp. The 2008 spending on such activities increases from \$3.6 million under the president's 2008 request (which ESA did not receive) to \$6.6 million, an increase of more than 80 percent. What is the explanation for such a dramatic increase in this category of spending? Specifically, how does this proposed spending support the goals of ESA?

*Answer.* After further review, we realize that our initial response to an informal question from the committee was incomplete. The appearance of a significant in-

crease in the fiscal year 2008 estimate of spending for “special personal services payment and other personnel comp” is the result of the Employment Standards Administration’s (ESA’s) inconsistent use of some of the detailed budget object classes for personnel compensation. This issue, which became known when the Department implemented its new budget system that displayed a more detailed object class breakout, has been corrected.

Although the fiscal year 2008 funding for object class 11.5 was included in the requested funding level for 11.0 (Total Personnel Compensation, which includes funding for regular salaries, as well as awards, overtime, and other personnel costs), it was not displayed in detailed object class 11.5 as it should have been. It was, unfortunately, displayed in other object classes within 11.0. With the implementation of the Department’s new budget system, ESA is now providing a more accurate object class breakout.

Moreover, in fiscal year 2008, ESA requested a total amount of \$267.879 million for total personnel compensation (11.0), but was appropriated only \$253.264 million—\$14.615 million less than requested. The actual amount enacted for fiscal year 2008 for total personnel compensation was reflected correctly in the fiscal year 2009 submission.

#### OFFICE OF LABOR-MANAGEMENT STANDARDS

*Question.* According to the Department’s evaluation of the Labor Management Reporting and Disclosure program, OLMS technology creates a problem for timely filing of required reports, as do difficulties with understanding LM form instructions and recordkeeping. What steps is OLMS taking in 2008 and planning in 2009 to address these findings? What level of resources will support these actions?

*Answer.* In fiscal year 2007, DOL contracted with Eastern Research Group (ERG) for an analysis and evaluation of the OLMS reporting and disclosure program. In its October 31, 2007 report, ERG stated that, in general, “OLMS has well established, organized, and documented policies and procedures in place to assist union officers in complying with LMRDA reporting requirements, to encourage compliance, and to rectify compliance problems with individual unions.” The report also noted that issues with electronic filing and difficulties with understanding LM form instructions represent obstacles to union compliance with LMRDA reporting.

To obtain further information on electronic filing difficulties, DOL commissioned ERG to perform a cost benefit analysis regarding potential improvements to the OLMS Electronic Labor Organization Reporting System (e.LORS). The e.LORS system provides labor organizations with the capability to electronically submit their reports, enables OLMS personnel to secure and analyze reported data, and provides a means for public disclosure of LM reports filed by labor organizations through an Online Public Disclosure Room.

In its March 14, 2008 report, ERG noted four concerns with the current e.LORS system and recommended that OLMS replace the Adobe Forms and Adobe Server components of e.LORS with a Web-based alternative that would alleviate all of the business and technical gaps. ERG also suggested that an alternative “pin and password” process could replace the existing electronic signature requirement, and that the existing date query system could be replaced with a more versatile web-based application.

OLMS has been reviewing ERG’s recommendations and expects to develop a plan to implement selected ERG recommendations. Congressional assistance will be important to implementing this plan, as fiscal year 2009 budget considerations will affect the extent to which ERG recommendations can be implemented. Meeting the President’s budget level is critical to improving e.LORS.

OLMS is also focusing on compliance assistance to help union officers better understand the LM Form instructions. At mid-year fiscal year 2008, OLMS field offices had completed 50 compliance assistance sessions to over 1,300 attendees. These sessions assist attendees on how to understand the LM forms and instructions.

OLMS’ existing metric of “percent of union reports meeting standards of acceptability” was created in 2003 prior to the advent of substantial numbers of unions filing reports electronically. At that time only 73 percent of paper reports met the criteria of “acceptability,” meaning that the form was facially compliant with the LMRDA (i.e., that required information fields were filled out) but not measuring accuracy or otherwise evaluating the filing. Thus, a report that meets the minimum level of “acceptability” may nevertheless contain serious deficiencies. Consistent cooperation with unions and extensive compliance assistance along with free software developed by OLMS and provided to unions, which assists in ensuring acceptability by pointing out facial inaccuracies or missing information, has allowed OLMS to increase the “acceptability” measure to 95 percent. As noted in the 2007 Performance

and Accountability Report, OLMS plans to replace the acceptability measure with a new performance measure—increased electronic filing—which would drive continuing improvements in LMRDA reporting compliance, provide more timely disclosure of reports and improve agency efficiency in managing reports and public disclosure.

A new baseline for electronic filing is being developed this year and future reports will use that baseline to measure OLMS performance. Acceptability remains a component of the new metric because as more unions file electronically, the percentage of reports meeting standards of acceptability also will rise.

*Question.* How does the OLMS track who uses the Union Reports.gov website and how is the information used to support the purposes of the LMRDA? Please provide the number or share of hits by different types of visitors, such as union members, employers, academics, etc.

Answer. OLMS does not collect information on who uses the union reports disclosure site and, therefore, has no way of determining the number or share of hits by different types of visitors. In calendar year 2006, OLMS recorded 79,319 visits to its Online Public Disclosure Room ([www.unionreports.gov](http://www.unionreports.gov)) home page, and in calendar year 2007 there were 228,154 visits.

The following chart provides more specific information with regard to 2007.

| Month              | Union/trust Search | Payer/payee Search | Officer/employee Search | Yearly |
|--------------------|--------------------|--------------------|-------------------------|--------|
| Jan .....          | 41,071             | 1,917              | 4,548                   | 1,274  |
| Feb .....          | 36,814             | 1,608              | 4,290                   | 1,184  |
| Mar .....          | 34,353             | 1,521              | 3,987                   | 1,168  |
| Apr .....          | 27,745             | 1,065              | 2,777                   | 839    |
| May .....          | 44,454             | 1,986              | 5,202                   | 1,674  |
| Jun .....          | 43,207             | 2,062              | 4,646                   | 1,790  |
| Jul .....          | 43,227             | 2,233              | 4,579                   | 1,842  |
| Aug .....          | 36,378             | 1,598              | 4,330                   | 1,456  |
| Sep .....          | 35,228             | 1,376              | 3,419                   | 1,311  |
| Oct .....          | 31,766             | 1,358              | 3,597                   | 1,262  |
| Nov .....          | 19,406             | 770                | 2,053                   | 761    |
| Dec .....          | 16,351             | 724                | 1,654                   | 591    |
| Yearly total ..... | 410,000            | 18,218             | 45,082                  | 15,152 |

The first column shows the number of union financial disclosure reports retrieved or searched from the disclosure site. The second column shows the number of queries seeking to retrieve data on payments from a union to a particular individual or company, or vice versa. The third column shows the number of queries concerning transactions involving union officers or union employees. The fourth column shows the number of times the contents of the database were downloaded.

The number of searches exceeds the number of visits to the disclosure home page because a single visit may involve multiple searches and individuals may access the disclosure site through a bookmarked page or by other means that circumvent the disclosure home page.

One of the primary purposes of the LMRDA is to publicly disclose the financial conditions and operations of labor organizations. See 29 U.S.C. § 435 (Reports Made Public Information). “By such disclosure, and by relying on voluntary action by members of labor organizations, abuses can be eradicated effectively.” Senate committee report, S. Rep. No. 187 (1959), at 15. Publicly disclosed information empowers union members to become educated about their labor organization, to express knowledgeable opinions at membership meetings, and to cast informed votes at union officer elections.

#### FAMILY AND MEDICAL LEAVE

*Question.* Family and Medical Leave Enforcement: I frequently hear from constituents the hardships they are having because their FMLA claims are denied, many of them incorrectly, but in some cases, in ways that would become legal under this new regulation. I have heard the following complaints:

- The employer requires diagnosis of health condition on FMLA form.
- The employer contacts the worker’s medical provider directly and demands more medical information than required under regulations.
- Multiple employers are refusing to approve completed FMLA paperwork or they frequently ask employees to return to health care provider for more information



- at great inconvenience to workers who are already spending a great deal of time coping with a chronic health condition.
- Employers fail to inform employees of rights to FMLA when they ask for medical leave.
- The employer issues attendance points for absences that should have been covered under FMLA.
- The employer asks for recertification more often than allowed under regulations.
- The employer attempts to limit the amount or frequency of intermittent leave for a serious health condition.
- The employer uses FMLA absences to downgrade an employee's performance rating or evaluation.

I would like to know if the Department has considered the complaints they have received from the field about employers engaging in the very same activities that the regulations would permit.

Answer. On February 11, 2008, the Department of Labor published proposed revisions to certain regulations implementing the Family and Medical Leave Act of 1993 (FMLA). The public comment period closed on April 11, 2008, and the Department is carefully reviewing all of the 4,500 comments that it received from workers, employers, health care providers, and other stakeholders.

#### AMERICAN TIME USE SURVEY

*Question.* The American Time Use Survey provides critical information on Americans' work and commuting schedules, the time they spend taking care of children and sick adults, the time teenagers spend doing homework and all of the other activities that make up Americans' days. The survey costs only \$4.3 million per year. Over 1,500 researchers (including 4 Nobel Prize winners) signed a statement requesting that the Congress restore funding for the American Time Use Survey.

Why does the Department's budget propose eliminating this critical survey?

Answer. The administration made the decision to eliminate the ATUS in order to partially offset the rising costs of the Current Population Survey (CPS), a Principal Federal Economic Indicator. Eliminating the ATUS—one of BLS's newest and lowest priority surveys—allows BLS to focus its resources on higher priority programs that protect the accuracy and reliability of the monthly data on the Nation's labor force. Also, it is worth noting that not all industrialized countries that conduct time use surveys do so on an annual basis. On the other hand, CPS data—most notably the monthly unemployment rate—are among the Nation's most critical and widely used economic indicators in setting economic and social policies, and the preservation of the survey's sample size is most critical.

#### DOCUMENTING MISSING INJURY CASES

*Question.* According to the Bureau of Labor Statistics website, BLS is taking a number of steps to learn more about research results documenting missing injury cases in individual firms, as determined by comparisons between BLS and State workers' compensation data, and to address any deficiencies in its survey operations.

Please describe the efforts planned or underway in fiscal year 2008 and planned for fiscal year 2009 to address the documents underreporting?

Answer. The annual DOL reports of occupational injury and illness estimates come from the BLS annual Survey of Occupational Injuries and Illnesses (SOII). The survey captures data from Occupational Safety and Health Administration (OSHA) logs of workplace injuries and illnesses maintained by employers. Recent outside research has indicated that both SOII and workers' compensation programs missed cases. Beginning in fiscal year 2008 and continuing into fiscal year 2009, the BLS is examining and extending the results of this research to better understand the research methodology and the nature of the comparisons to determine if any changes in BLS survey operations are needed. In addition, the BLS conducted its own "follow-back" study in fiscal year 2007, with final results tabulated in fiscal year 2008. The results indicate that the survey correctly captured the data that employers recorded on their OSHA logs.

In fiscal year 2008, the BLS began interviewing a small number of SOII respondents to learn about the decisions they make about reporting cases to workers' compensation programs and on the OSHA log. The purpose is to understand situations where workers' compensation cases might not be recorded on OSHA logs and vice versa. These interviews are being conducted by a BLS cognitive survey methodologist. At the request level, the BLS plans to expand the number of these interviews conducted in fiscal year 2009. Finally, the BLS has documented much of its analysis

of the undercount issue to date, and its plans for future research, and will publish a research note in an upcoming issue of the Monthly Labor Review.

The BLS has updated its "Frequently Asked Question" (FAQ) on this topic at <http://www.bls.gov/iif/peoplebox.htm#faqaa>.

*Question.* How much is being spent or planned to be spent in fiscal year 2008?

*Answer.* The BLS plans to spend approximately \$240,000 on these activities in fiscal year 2008.

*Question.* How much is requested in the BLS 2009 budget for these activities?

*Answer.* At the 2009 request level, the BLS expects to spend approximately \$300,000 for the activities described above relating to potential underreporting.

*Question.* The BLS website also indicates that BLS is developing its own "follow-back" study to ensure the survey correctly captures the data that employees have recorded in the OSHA logs and that further research is still being planned as well.

Please describe the follow-back study as well as future research plans?

*Answer.* In 2007, the BLS conducted a quality assurance recontact survey that indicated that BLS survey processes were not responsible for an undercount. A sample of 3,600 establishments who participated in the 2006 survey were recontacted and asked to submit their OSHA logs, used in filling out the SOII survey form, to the BLS. The BLS then compared the OSHA logs to data for the SOII. There was no systematic evidence that the data in the SOII undercounted cases recorded on OSHA logs. This study did not attempt to ascertain whether the OSHA logs were correct or complete; the BLS is not responsible for ensuring the accuracy of OSHA logs from which the survey data is derived.

*Question.* What resources are being allocated to the study or research on this issue in fiscal year 2008?

*Answer.* In fiscal year 2008, BLS completed the final tabulations and the final report on the fiscal year 2007 recontact survey, with minimal staff time used. Under \$90,000 was spent to conduct the study in fiscal year 2007.

*Question.* How much is being requested in 2009 for these areas?

*Answer.* The BLS has no current plans to conduct another recontact survey related to the SOII undercount issue. Therefore, the BLS request includes no funding related to the SOII recontact survey.

#### OFFICE OF DISABILITY EMPLOYMENT POLICY

*Question.* The Department's performance goal for the Office of Disability Employment Policy is to "build knowledge and advance disability employment policy that affects and promotes systems change." The performance targets developed by DOL for this goal include:

- The number of policy related documents issued by ODEP, which falls from 34 in fiscal year 2008 to 8 under the DOL budget request for fiscal year 2009; and
- The number of effective practices developed or validated by ODEP drops from 24 in fiscal year 2008 to 15 under the DOL budget request for fiscal year 2009.

Does DOL believe that ODEP's mission has been completed and there is less of a need for developing effective practices or issuing policy-related documents?

*Answer.* ODEP's mission, "to provide national leadership by developing and influencing disability-related policy and practice affecting the employment of people with disabilities" continues to be an important component of the Department's overall mission. From fiscal year 2004, when it began tracking the number of effective practices it developed, through fiscal year 2007, ODEP's investments resulted in the development and dissemination of 79 effective practices. Since fiscal year 2006, when it began counting the number of policy documents produced as a measure of its performance, ODEP's efforts have produced 54 policy documents. In fiscal year 2009, ODEP will focus its efforts on developing and implementing disability employment policy to increase the recruitment, retention and promotion of people with disabilities, and eliminate duplicative grant making activities. The requested funding level will allow ODEP to develop national policy related to and affecting employment of people with disabilities; foster the implementation of effective policies and practices within State and local workforce systems and with employers; conduct research and analysis that identifies and validates effective disability-employment strategies; and provide technical assistance on implementing effective disability employment policies and practices throughout the workforce development system, its partners and employers. The Department believes that ODEP's mission continues to support the agency's efforts to develop and influence the implementation of policy that reduces barriers to employment.

*Question.* Please explain the goals, operations and outcomes achieved under the ODEP Alliance? How much has been allocated to this Alliance over the past 3 years and the 2009 request?

Answer. The purpose of the Alliance initiative is to increase voluntary collaboration between ODEP and other public entities, including employers, organizations, and institutions. The operations of the Alliance initiative include formalizing the collaborative agreement with the Alliance entity, conducting outreach of the Alliance initiative, and managing specific Alliances. The goals of the Alliance initiative are to promote training and education, disseminate best practices, promote outreach and communication, and advance dialogue that promotes the employment of people with disabilities. Alliances are currently in place with the Society for Human Resources Management (SHRM) and CVS/Caremark.

Since the Alliance initiative began in 2007, the following results have been achieved:

- February 27, 2007: Presentation describing the ODEP/SHRM Alliance to Salisbury (Maryland) Chamber of Commerce members. The Salisbury Chamber is host to the Eastern Shore Business Leadership Network and is a 2003 New Freedom Initiative (NFI) Awardee.
- October 5, 2007: At the 2007 Virginia State SHRM Conference, Driving Competitive Advantage, in Arlington, Virginia, ODEP presented a paper that describes resources being developed to assist employers in hiring, employing and advancing people with disabilities.
- ODEP, together with Job Accommodation Network (JAN) and Employer Assistance & Recruiting Network (EARN) staff, welcomed conference attendees to ODEP exhibits at SHRM Conferences and shared information on ODEP policy initiatives, disability employment practices, and JAN and EARN services. Various ODEP policy advisors attended conference sessions and networked with SHRM members:
- April 23, 2007, Staffing Management Conference and Exposition (750 attendees), New Orleans, Louisiana;
- June 24, 2007, Annual Conference and Exposition (22,000 attendees), Las Vegas, Nevada;
- October 3, 2007, Virginia SHRM Conference (700 attendees), Arlington, Virginia;
- October 18, 2007, Diversity Conference (500 attendees), Philadelphia, Pennsylvania; and
- April 14, 2009, Staffing Management Conference and Exposition (1,200 attendees), Nashville, Tennessee.

As part of a comprehensive outreach effort, since 2007, ODEP has allocated \$100,000 toward its Alliance initiative, and the fiscal year 2009 budget provides \$50,000.

#### LEGAL SERVICE/SOLICITOR'S OFFICE

*Question.* The 2009 budget indicates that the request level for legal services will allow the office to handle 36 percent fewer regulatory projects. Please identify by DOL agency the number of projects completed in fiscal year 2007, planned/completed in 2008 and planned in 2009.

Answer. Because regulatory initiatives vary widely in complexity and the time and resources necessary to complete them, and reflect policy decisions made outside the Office of the Solicitor (SOL) rather than merely workload capacity in SOL, workload projections are based on an average amount of time spent on regulatory projects rather than the number of actual regulations. Assuming each "regulatory project" required the same expenditure of resources, SOL estimates that at the funding level requested in fiscal year 2009, it would be possible to work on approximately 36 percent fewer such projects than fiscal year 2006. The 36 percent decrease was derived by comparing the actual hours spent by SOL attorneys on all regulatory matters in fiscal year 2006 and fiscal year 2007 with the hours that are projected to be available for such work with the resources requested in fiscal year 2009. It should also be noted that some SOL regulatory work includes reviewing non-DOL proposed regulations for their potential impact on DOL-administered laws and regulations. Because these estimates reflect average times spent on average regulatory projects, rather than actual projects, DOL's Semi-Annual Regulatory Agenda (available at [http://www.dol.gov/asp/regs/unifiedagenda/spring\\_2008\\_agenda.pdf](http://www.dol.gov/asp/regs/unifiedagenda/spring_2008_agenda.pdf) and at Regulations.gov) should be consulted for an accurate prediction of the regulatory projects that DOL will complete in the next 12 months.

#### OFFICE OF JOB CORPS

*Question.* During the hearing, Secretary Chao stated that the 2009 budget request maintains a level of service currently offered by the Job Corps. I have heard from

a number of my constituents that the Denison Center in Iowa has had to reduce teaching staff, which means greater class sizes; defer replacement of high school textbooks and aging computers; and a reduction of a daycare provider for their solo parent program.

How is it possible to maintain services at the President's budget level, when I have heard that the last couple years of funding have resulted in program service reductions? What has been the impact of relatively flat funding over the past 2 years on the level of service offered by the Job Corps program?

Answer. Current budgetary constraints require us to make difficult choices with the resources available. The Job Corps program will continue its efforts to find cost efficiencies to offset increases in health, energy and transportation so that we can maximize the number of students served. The 2009 budget request for Job Corps will enable us to maintain the same level of service to its students and keep high levels of performance with respect to job placement, diploma attainment, and numeracy and literacy gains.

*Question.* Additionally, Secretary Chao stated that the Department is "very focused to keep Job Corps a strong program" that serves young people and further stated that a reason for the cut was the unused beds within Job Corps.

If the Department is focused on keeping Job Corps a strong program why wouldn't the Department enhance its investment in recruitment of students?

Answer. Job Corps continues to maintain and develop our recruitment and outreach efforts. Job Corps consistently spent \$6 million for each PY from 1999 through 2005 on its recruitment campaign; Job Corps spent \$5 million in PY 2006 and \$6 million in PY 2007. The recruitment budget for PY 2008 will not be less than PY 2007 funding levels.

In October 2006, all Job Corps recruitment efforts were consolidated under the National Office. Previously, the National Office and each of the six regions had separate outreach support contracts. While the separate regional outreach efforts allowed for regional and center-specific outreach and recruitment approaches, having materials produced by different contractors had the unintended effect of diluting the Job Corps brand and duplicating efforts.

Under this centralized plan, the National Office oversees the creation of Outreach & Admissions (OA) and CTS materials such as brochures and posters for distribution to Regional Offices and OA and CTS project directors. This plan resulted in better utilization of resources by providing economies of scale and allowing the program to have consistent name brand recognition.

*Question.* Why hasn't the Department responded to Congress' directive to develop and implement a national plan to increase enrollment?

Answer. Job Corps has responded to Congress' directive to develop and implement a plan to increase enrollment. Highlights of that report are as follows:

In October 2006, Job Corps' Consolidated Outreach and Recruitment Plan was launched, which combined the outreach efforts of the National Office and its six Regional Offices into a single contract. This allows Job Corps to take advantage of economies of scale and ensures that a single message is communicated to our target audience. With this consolidated plan, OJC rolled out new recruitment materials and television outreach segments as of May 1, 2007. All OA contractors, Regional Offices, and the Job Corps National Call Center are being provided with these national materials.

In May 2007, Job Corps launched the Youth Ambassador program, a program that serves as a student speakers' bureau to introduce Job Corps to potential workforce and recruitment partners. The ambassadors' goals are to: share their Job Corps experiences and success stories to select groups/organizations; help recruit new students; educate target audiences about the benefit of Job Corps; and serve as mentors. Each Job Corps region has two student ambassadors: one primary and one alternate. The first ambassador public speaking training conference was conducted January 7–10, 2008.

Job Corps is also in the process of developing a national recruitment Web site that provides a single portal for prospective students, their parents and other adult influencers; an online application process to further streamline the enrollment process will also be added to the new site. This site will be a public site which will be linked to the primary Job Corps Public website as well as Job Corps Center websites. Users will be able to navigate between the various sites at their discretion.

In addition to the national outreach and recruitment strategies OJC coordinates regional activities as well. Each Regional OJC administers and oversees several Outreach and Admissions (OA) contracts that are responsible for both recruiting and enrolling students in Job Corps centers. Each Region develops a Geographic Assignment Plan (GAP) using a national GAP planning template to ensure consistency across all regions, which assigns specific arrival goals to each OA contractor by spe-

cific Job Corps centers. Regional Offices monitor the success of the OA contractor in reaching these goals and review regional-level data to make adjustments to the GAP as necessary.

It is important to note that the number of students enrolled in the program is not solely a function of recruitment and admissions. In addition to student arrivals, the number of student separations and students' average length of stay also factor into the program's On Board Strength (OBS). A vital component of increasing Job Corps' on board strength (OBS) is student commitment, or the willingness and readiness of a student to remain in the program through graduation. To improve performance in this area, Job Corps has implemented the Speakers, Tutors, Achievement, Retention, and Success program (STARS), offering structured tutoring and mentoring to provide those students at risk of leaving early the encouragement and support necessary to remain longer in the program, thereby increasing the number of program graduates. Furthermore, OJC implemented Career Success Standards (CSS), which incorporates employability and social skills development into all aspects of the program, leading to a more personalized relationship between staff and students, improving center culture, and students' willingness to remain in Job Corps.

To further focus on improving student commitment, retention and to reduce the number of students who leave the program due to drugs or violence, Job Corps implemented a small drug test pilot program in the Philadelphia region. Applicants are tested for drug use prior to admission to further ensure that the program is enrolling students who are committed to their education and ready for the rigor and demands of the program. This pilot will allow Job Corps to determine the effect of pre-enrollment drug screening on retention, early program separation due to drugs and or violence and student outcomes.

The preliminary results of Philadelphia drug screening pilot and the program's early separation analysis provides support that students who enter the program drug-free are more likely to remain in the program beyond 60 days.

Thus, Job Corps is addressing challenges with recruitment and retention throughout the program in order to implement a more holistic solution.

*Question.* Please describe the specific steps the department has taken to strengthen the interaction between outreach/admission contractors and center operators, and to ensure that outreach/admission contractors are effectively carrying out their responsibilities?

*Answer.* Job Corps has historically taken definitive steps to strengthen the interaction between outreach/admissions contractors (OA) and center operators and to ensure that OA contractors are effectively carrying out their responsibilities.

Job Corps' performance management system, entitled the Outcome Measurement System (OMS), is one of the major factors encouraging collaboration between all Job Corps operators and ensuring that each are effectively carrying out their respective responsibilities.

Job Corps' performance management system is comprised of four outcome measurement systems:

- Outreach and Admissions (OA) Report Card
- Center Report Card
- Career Transition Services (CTS)
- Career Technical Training Report Card

Each outcome measurement system assesses performance in specific areas of responsibility with respect to serving students throughout the Career Development Services System (CDSS). Combined, these outcome measurement systems provide a comprehensive picture of performance throughout all phases of students' Job Corps experience. Thus, it is critical that the systems be closely aligned to both encourage collaboration in delivering quality services to students and provide an accurate reflection of efforts towards meeting clearly defined program goals.

Each component of the program's (Outreach Admissions [OA], Center and Career Transition Service [CTS]) report cards contains elements that are impacted by the performance of the other program components. The interdependence is such that one component of the program can not perform well overall if other components are performing poorly.

Additionally, a recent, yet significant, step to hold OA providers accountable and strengthen the interaction between OA contractors and center operators was the implementation of performance based contracts (PBSC) for Outreach and Admissions. Previously only center and career transition operators' contracts were performance based. Effective February 7, 2008, all new OA contract awards have the appropriate performance based contract language added to the contracts.

## VETERAN'S EMPLOYMENT AND TRAINING ADMINISTRATION

*Question.* Approximately 200,000 service members and 90,000 Reserve and National Guard Members are discharged from active duty annually.

Specifically, how is the 2008 appropriation used to ensure their employment rights are being protected and transition and training programs are effective and available?

*Answer.* Regarding the protection of employment rights, the fiscal year 2008 appropriation will be used to train and maintain a corps of over 100 trained investigators in our Regional and State offices throughout the country, six Senior Investigators (one in each Region) and a team of compliance and investigations specialists at the National Office. The fiscal year 2008 appropriation will support our aggressive outreach program to ensure employees and employers understand their respective rights and obligations under the statute. VETS national and regional staff will continue briefing deploying and returning military units, State Chambers of Commerce, State Bar associations and professional associations, and conduct information sessions through a variety of electronic media. We are hopeful that our outreach program will result in fewer USERRA complaints and violations. However, when we receive a USERRA complaint, we thoroughly and promptly investigate to ensure compliance with the law. Under the Transition Assistance Program (TAP) the appropriation supports the delivery of TAP employment workshops and provides VETS with the flexibility to provide targeted funding in response to exigent circumstances, such as an increased demand for TAP Employment Workshops. The number of TAP Employment Workshop participants is expected to continue to increase during fiscal year 2008 and fiscal year 2009 as TAP Employment Workshops are being extended overseas to serve Guard and Reserve units and individuals; and as DOD works to meet its goal of an 85 percent participation rate in TAP Employment Workshops. As demand for TAP Employment Workshops increases, VETS will coordinate with DOD to provide additional workshops while working to maintain optimal class sizes. The additional TAP Employment Workshops would be delivered through a combination of Disabled Veterans' Outreach Program (DVOP)/Local Veterans' Employment Representative (LVER) staff and/or contracted facilitator support.

*Question.* Does the fiscal year 2009 request provide sufficient funds to address VETS' responsibilities?

*Answer.* Yes, the fiscal year 2009 request provides sufficient funds to address VETS' responsibilities.

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 QUESTION SUBMITTED BY SENATOR DANIEL K. INOUE

## STATE OF HAWAII NATIONAL EMERGENCY GRANT

*Question.* On March 20, 2008, Aloha Airlines shut down its passenger operations. This is the largest mass lay-off in Hawaii's history. It has put approximately 1,900 employees out of work. Hawaii has recently filed a National Emergency grant to assist with the job retraining and placement of these workers. Madame Secretary, this application is pending your review, and I would greatly appreciate your swift and favorable review. Time is of the essence so many of these former employees can look to new career opportunities as they struggle to get their lives back on track. Your review of this is much appreciated. Can you inform us of where you are in this process?

*Answer.* The Department is in the final stages, working with the State of Hawaii, of developing its decision to award a National Emergency Grant (NEG). The State's request identified approximately 710 workers needing services, including 146 pilots who would need training on aircraft other than those they flew for Aloha Airlines.

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 QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

## PROVIDING ADDITIONAL WORKERS WITH SERVICES

*Question.* In light of the Department's fiscal year 2009 proposed budget cuts to programs under the Workforce Investment Act and the elimination of Employment Services, how do you propose to accommodate the additional workers who are likely to need employment and training services during these turbulent economic times?

*Answer.* The fiscal year 2009 budget request complements the administration's proposal for job training reform, which seeks to provide services in a more cost-effective way. This reform proposal would consolidate the Employment Service and the Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth funding

streams into a single funding stream to be used for Career Advancement Accounts and employment services. In addition to eliminating the duplication between the Employment Service and WIA One-Stop delivery system that still exists in a number of States, it would replace the current siloed system of separate training programs, reduce administrative and overhead costs, and, most importantly, significantly increase the number of individuals who receive job training. Approximately 200,000 individuals receive training through the public workforce investment system each year. However, these reforms would increase the number of workers trained to over 600,000.

Overall, the fiscal year 2009 budget request makes a substantial investment in job training. Government-wide, the budget invests more than \$13 billion in training and employment programs. Including Pell Grants for students pursuing training at technical or community colleges brings this total to \$23 billion.

#### ASSISTANCE TO LOW-INCOME, OUT-OF-SCHOOL YOUTH

*Question.* This is the final budget that you will present for the Department of Labor as Secretary of the Department. It comes at a time when the United States has the highest proportion of students who drop out of secondary schools in the world—our teens ages 16 to 24 have the lowest annual average employment rates since World War II—and the employment rates for young adults ages 20 to 24 with no 4-year college degrees were substantially below those of 2007—especially for young men.

What have you done over the past 7 years as Labor Secretary that addresses the needs of the millions of young people who are low-income, out-of-school, and out of work in a significant and meaningful way—beyond Job Corps, which was a service for disadvantaged young people before you became Secretary and will continue to be so when your term ends?

*Answer.* In 2004, the Department adopted and announced its new strategic vision to more effectively serve those youth most in need of services: out-of-school youth and at-risk youth. Recognizing the necessity of involving other Federal agencies that serve other groups of neediest youth in this collaborative effort, the Department's outreach and recruitment strategy led to the creation of a national cross-agency group, which evolved into the Shared Youth Vision Federal Partnership. The Federal Partnership now includes nine Federal agencies. This group serves as a catalyst at the national, State, and local levels to promote the Shared Youth Vision by strengthening the coordination, communication, and collaboration among youth-serving agencies to support the neediest youth in acquiring the talents, skills, and knowledge necessary for their healthy transition to successful adult roles and responsibilities.

The Federal Partnership has been actively involved in sponsoring numerous activities to promote the Shared Youth Vision to State and local agencies serving youth. These activities have included: (1) a series of Shared Youth Vision technical assistance forums nationwide for State teams; (2) the selection of 16 Shared Youth Vision Pilot Project State teams to develop and implement strategic approaches that leverage their State-level coordination at the local service delivery level; (3) the development and implementation of a comprehensive technical assistance plan for infusing the collaborative vision in all States throughout the country; and (4) funding a Shared Youth Vision Implementation Study.

Beginning 3 years ago, the Department's Youth Vision began to address the problems created by the large number of youth leaving high school without a diploma. The increased national focus on the impact of high drop-out rates on regional economic development, as well as the lessons learned through DOL-sponsored Alternative Education Listening Sessions, has driven the development of a multiple education pathways strategy that will increase the quality and quantity of alternative education opportunities and post-secondary opportunities for formerly out-of-school youth. The Department has demonstrated its leadership through the support of seven cities (Brockton, Massachusetts; Des Moines, Iowa; Fall River, Massachusetts; Gary, Indiana; Metairie, Louisiana; Mobile, Alabama; and Pittsburgh, Pennsylvania) in their efforts to develop a blueprint to create high quality, innovative multiple education pathway systems through our Multiple Education Pathway Blueprint (MEPB) initiative (funded at \$3.4 million). MEPB addresses talent development and the very real need to address the high costs of increasing numbers of drop-outs and their negative impact on regional and State economic development.

The Department is continuing to develop bridges between One-Stop Career Centers and offender-focused youth programs in local communities to improve services to young offenders. The co-enrollment of youth offenders in Workforce Investment

Act-sponsored programs, Temporary Assistance for Needy Families, and Average Daily Attendance funds offer other examples of utilizing funds more effectively and leveraging resources. Some of the benefits of these arrangements include cost sharing and improved communication among participating programs.

The Department of Labor also is providing leadership in serving out-of-school youth through our investments in YouthBuild and Youth Offender initiatives and focusing efforts on reconnecting the neediest youth to high-quality alternative learning environments that lead to a diploma and to post-secondary training.

#### UNDERREPORTING OF INJURIES

*Question.* I continue to hear the administration's claims that worker injuries and illnesses on job are on the decline; yet, I also continue to hear about the problem of underreporting workplace injuries.

Last year, in my first oversight hearing on OSHA in my Employment and Workplace Safety Subcommittee, Dr. David Michaels told us that the "true incidence . . . is far higher than reported by the Bureau of Labor Statistics since these data do not include approximately two-thirds of occupational injuries and illnesses." (testimony for Dr. Michaels can be found at [http://www.help.senate.gov/Hearings/2007\\_04\\_26/2007\\_04\\_26.html](http://www.help.senate.gov/Hearings/2007_04_26/2007_04_26.html)).

The problem goes beyond inadequate data collection. Experts cite various reasons for underreporting, including OSHA's failure to issue new regulations, employer disincentives to report these incidents, and workers' fear of retaliation.

I believe that underreporting is a real problem and that is why I initiated a GAO investigation into OSHA efforts to ensure that employers are reporting injuries and illnesses accurately.

What steps is the Department taking to proactively address the problem of underreporting workplace injuries and illnesses, particularly as it relates to areas under the jurisdiction of OSHA and BLS?

*Answer.* The Department's annual injury and illness statistics are derived from the BLS Survey of Occupational Injuries and Illnesses (SOII). The survey captures data from Occupational Safety and Health Administration (OSHA) logs of workplace injuries and illnesses maintained by employers. While recent studies by outside researchers have reported that both SOII and workers' compensation programs undercount cases, these studies do not necessarily provide a definitive answer on the presence or size of any potential undercount, and thus do not provide an adequate basis for revising current BLS survey operations. The BLS is examining and extending the results of this kind of matching research to better understand the methodology and the nature of the comparisons.

In fiscal year 2008, the BLS began interviewing a small number of SOII respondents to learn about the decisions employers make that might lead to workers' compensation cases not being recorded on OSHA logs or workers' compensation claims not being filed for cases recorded on the logs. BLS plans to expand the number of interviews conducted in fiscal year 2009.

Finally, the BLS has documented much of its analysis to date of the purported undercount and its plans for future research, and will publish a research note in an upcoming issue of the Monthly Labor Review.

OSHA is responsible for ensuring that employers accurately record work-related injuries and illnesses on their logs. OSHA collects data from employers in industries with high rates of injuries and illnesses to identify individual high-rate establishments for potential OSHA interventions. Each year OSHA conducts approximately 250 recordkeeping audits of employers in high-rate industries to estimate the accuracy of the logs. These audits include a comprehensive review of documentation concerning actual injuries and illnesses, and a comparison of these cases to those recorded on the employer's log to determine if the log is accurate. These audits indicate that over 90 percent of the establishments accurately recorded injuries and illnesses.

*Question.* What steps has the Department taken in the past?

*Answer.* In fiscal year 2007, the BLS began efforts to expand the scope of the SOII to include State and local government workers in all States. With the expansion of the survey, the BLS will include these public sector workers in its National estimates, including those in such high hazard occupations as police, fire-fighters and public health workers. In fiscal year 2007, the BLS also conducted a quality assurance survey that indicated that BLS survey processes were not responsible for an undercount. A sample of 3,600 establishments that participated in the 2006 survey were contacted and asked to submit their OSHA logs to the BLS. The BLS then compared the OSHA logs to data for the SOII. Though this study did not attempt to ascertain whether the OSHA logs were correct or complete, there was no system-



atic evidence that the data in the SOII undercounted cases recorded on OSHA logs. OSHA has conducted yearly audits of the OSHA logs as described above.

#### OSHA STATE PROGRAMS

*Question.* State OSHA programs now cover more than half of all States or territories (26), yet Federal funding for these programs has not kept up. My home State of Washington is one such State that continues to do more with less but is constantly getting the short end of the stick from Federal OSHA. Funding increases over the last 7 years have been negligible or non-existent, although in fiscal year 2006 alone States issued 43,000 more violations and assessed millions of dollars more in penalties than Federal OSHA. Too many State programs have been forced to cut their operations budget, lay off inspectors or ask their overworked employees to forgo cost of living increases.

Why doesn't OSHA adequately fund the 26 State-run safety and health programs required under the law? Please provide me with detailed data concerning of the number of inspections performed, violations cited, and penalties collected in both Federal and State run programs, and a cost-benefit analysis of the resources allocated on both levels.

*Answer.* Section 23(g) of the Occupational Safety and Health Act provides for funding of State programs at a level which "may not exceed" 50 percent. Annual appropriations language also provides for funding "up to 50 percent of the costs required to be incurred." Of the 26 approved State Plans, 22 cover both the private and public (State and local government) sectors and four operate plans limited in scope to the public sector. Although no State Plan is required to contribute more than a 50 percent match of the available Federal funds, many States have chosen to contribute additional funding above their Federal match funding. Washington is one of those States.

The fiscal year 2008 Consolidated Appropriations Act provided \$1.6 million less than the President requested to fund these State Plan grants. This reduction exacerbated the difference between the Federal funds that were available and the amount that States were contributing to their safety and health programs. However, that gap has existed throughout the history of the program. This reflects, in part, the differences among the various States in the scope of their programs as well as the sources and availability of State funding compared to that made available from the Federal side.

Attached is a chart showing inspection, citation and penalty data for Federal OSHA and State Plans. OSHA has not conducted a cost-benefit analysis due to the wide disparity among the various State Plans as well as between the State and Federal programs. The differences among the various approved State plans would make a cost-benefit analysis very difficult to construct. Further, the results of such a study would be of limited value given the difficulty in assessing and interpreting the different State and Federal approaches with any reasonable or meaningful degree of validity. It is clear, however, that Federal penalties far exceed those remitted in the States while the number of State inspections and violations issued are greater than those shown in the Federal data.

#### FISCAL YEAR 2003–FISCAL YEAR 2007 FEDERAL OSHA ENFORCEMENT DATA

| Federal data only                 | Fiscal year  |              |              |              |              |
|-----------------------------------|--------------|--------------|--------------|--------------|--------------|
|                                   | 2003         | 2004         | 2005         | 2006         | 2007         |
| Total inspections conducted ..... | 39,931       | 38,286       | 38,828       | 38,604       | 39,400       |
| Total violations issued .....     | 82,422       | 85,586       | 84,266       | 82,909       | 88,170       |
| Total penalties remitted .....    | \$59,557,998 | \$59,765,326 | \$80,533,951 | \$61,146,763 | \$56,708,502 |

#### FISCAL YEAR 2003–FISCAL YEAR 2007 18(b) STATE PLAN OSHA ENFORCEMENT DATA

| 18(b) state plan data only        | Fiscal year  |              |              |              |              |
|-----------------------------------|--------------|--------------|--------------|--------------|--------------|
|                                   | 2003         | 2004         | 2005         | 2006         | 2007         |
| Total inspections conducted ..... | 60,868       | 58,990       | 57,481       | 58,567       | 51,545       |
| Total violations issued .....     | 138,293      | 132,263      | 126,097      | 125,753      | 124,429      |
| Total penalties remitted .....    | \$36,833,975 | \$36,243,306 | \$33,291,121 | \$31,171,361 | \$25,342,236 |

## FAMILY AND MEDICAL LEAVE

*Question.* Working families continue to face more and more challenges when it comes to balancing the needs of work and home. Fifteen years ago, Congress recognized a need to protect a worker's right to job-protected leave and did so by enacting the Family and Medical Leave Act of 1993. Since then, we know that more than 60 million people have benefited from this law, enabling them to care for their families or their own medical needs without the fear of losing their jobs.

Despite this fact, earlier this year, the Department proposed sweeping changes to the act in an administrative rule change. I joined a number of my colleagues from both Chambers in expressing our concern that collectively, these rule changes unnecessarily restrict a worker's access to their job protected leave and they upset the delicate balance between employers and employees carefully established in the original act. I believe that we should be proactively looking to expand FMLA to help working families better balance the needs of home and work, not restricting it even further.

I am most concerned that the Department proposed these changes without current, sound, and objective data to justify them. In fact, the last comprehensive survey completed by the Department was 8 years ago.

What prompted the Department to propose these sweeping changes without first conducting a comprehensive survey as many of us recommended in our response to last year's Request for Information?

*Answer.* The proposed changes are based on a careful examination of the Department's experience of nearly 15 years administering the law, several U.S. Supreme Court and lower court rulings on the FMLA, enactment of the new military caregiver leave provisions (Public Law 110-181), and the more than 15,000 public comments the Department received from workers, employers, health care providers, and other stakeholders in response to a Request for Information that was published on December 1, 2006.

*Question.* Will you commit to conducting such a survey before implementing final rule changes? If not, why?

*Answer.* In response to the RFI, the Department received a significant amount of data on FMLA leave usage. The RFI was a useful information collection method that yielded a wide variety of objective survey data and research, as well as a considerable amount of company-specific data and information from employers, both large and small, in a wide variety of industries.

As explained in the RFI Report, despite the criticisms and limitations of the 2000 Westat Report, the Department believes that it provides a great deal of useful information and data on FMLA leave-takers. Moreover, the Department has significantly supplemented and updated its knowledge of the impacts of FMLA leave, particularly intermittent FMLA leave based upon the information received in response to the RFI.

The targeted updates in the proposed rule are well-supported by the available data, the Department's enforcement experience, case law developments, and the more than 15,000 public comments the Department received from workers, employers, health care providers, and other stakeholders in response to a Request for Information that was published on December 1, 2006.

*Question.* During your tenure as Secretary, what proactive steps have you taken to expand job protected leave for workers?

*Answer.* The Wage and Hour Division employs complementary strategies—enforcement, compliance assistance, and partnerships—to promote compliance with the FMLA by covered employers.

## OFFICE OF APPRENTICESHIP

*Question.* In December 2007, the Department of Labor issued a Notice of Proposed Rulemaking to update the regulations for the National Apprenticeship Act of 1937. I heard from a number of organizations in my home State that these proposed changes would reduce the effectiveness and weaken the high standards that the Washington State's Apprenticeship Council has maintained since its establishment in 1939. Washington's apprenticeship programs have developed safety and training standards that are a model for other States. In March of this year I joined many of my congressional colleagues from Washington State in sending a letter to your agency, detailing our concerns about your proposal and the negative effect it will have on our State's apprenticeship programs. What prompted the department to propose these changes?

*Answer.* The main impetus for updating the regulations was to develop a more flexible, adaptive and responsive national apprenticeship system that could continue to be strong and relevant in the 21st century. The existing regulations were origi-

nally published in 1977 and have not been revised in 30 years. These regulations have not kept pace with the changing work environment, technology, or the rise of the global economy. Many of the changes defined and clarified in the Notice of Proposed Rulemaking were, in fact, already put into effect administratively because the existing rule was silent on the subjects. Additionally, many of the changes are intended to provide the kind of flexibility needed to serve the demands of industries that have not traditionally used, but could benefit from, the registered apprenticeship model. Finally, the proposed regulations ensure that registered apprenticeship keeps pace with technological changes, particularly in the delivery of related technical instruction.

The Advisory Committee on Apprenticeship, which consists of equal representation from employers, labor, and the public sector, contributed to the development of the proposed regulatory framework that will align registered apprenticeship with the realities of the 21st century economy and changes in the workplace. Throughout the development of the proposed revisions, the Department has focused on maintaining the integrity of the key components of registered apprenticeship that have made it such a successful and useful model for addressing the needs of industries and employers that have sponsored registered apprenticeship programs for many decades. These key components are on-the-job learning, related instruction, incremental wage increases, and mentoring.

*Question.* Who if any stakeholders expressed concern about the current regulations?

*Answer.* Over the past several years, the Department received numerous concerns from employers, employer associations, and labor organizations about the existing regulations. Many of these concerns are reflected in our purposes for updating the regulations, including the need for improved accountability, opportunities to incorporate technological advances, and more flexible options for program sponsors and apprentices. Additionally, concerns arose from the need to develop consistency for the registration of programs across the national apprenticeship system. Finally, many stakeholders, including labor unions, as well as oversight entities, including the Office of Management Budget and the Government Accountability Office, have asserted that the Department should strengthen accountability for quality and successful outcomes across all registered apprenticeship programs.

*Question.* What exactly does the agency hope to accomplish with these proposed changes?

*Answer.* With the proposed changes, registered apprenticeship will have the regulatory framework to: (1) continue to expand into new industries and occupations that are critical to maintaining a globally competitive workforce, (2) strengthen outcomes through an emphasis on program quality and accountability for all program sponsors, and (3) accommodate for technological advances in delivery of related technical instruction.

Any and all proposed changes to the regulatory framework remain rooted in the fundamental tenants of the National Apprenticeship Act, which authorizes the Secretary of Labor to “formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices.” These changes also maintain the integrity of the original regulatory framework developed for industries that created and sustained the American apprenticeship system, particularly those in the construction and manufacturing industries.

#### REAUTHORIZATION OF TRADE ADJUSTMENT ASSISTANCE

*Question.* The Department of Labor’s Trade Adjustment Assistance program provided critical assistance to hundreds of thousands of workers who have lost their jobs due to increased imports and offshore shifts in production for more than 40 years. The program’s authorization expired at the end of 2007, but assistance continues to be provided until Congress funding runs out at the end of fiscal year 2008. TAA could cease to exist in just 4 months.

What specific steps does the administration intend to take in order to reauthorize TAA by 10/1/08?

*Answer.* The administration strongly supports Trade Adjustment Assistance (TAA) reauthorization that includes needed reforms to help workers adversely impacted by trade access the training and re-employment services they need to return to work quickly. The administration will continue to work with Congress to make TAA a more flexible and beneficial program for workers.

*Question.* I am working closely with Senator Max Baucus to not only reauthorize the program, but to also improve access to training and make assistance more accessible and flexible.

Please provide your comments on the various proposals included in Senator Baucus' legislation?

Answer. The administration has not taken positions on specific proposals in S. 1848.

*Question.* One of the glaring holes in the program is that all trade-impacted service workers are not currently eligible for assistance. How does the administration propose to fix this problem? What other proposals might the administration put forward to ensure that TAA provides adequate assistance to all eligible workers?

Answer. The administration believes there are several flaws in the Trade Adjustment Assistance (TAA) program as it is currently designed. These flaws include: (1) TAA is an "all or nothing" program, where participants lose access to benefits by choosing to return to work; (2) Training options are limited and the process of applying for training is lengthy and bureaucratic; (3) Services cannot be provided until after the worker is laid off, even when the layoff is announced well in advance; and (4) There is no requirement that "wrap-around" services, such as career counseling, assessment and job placement assistance, are to be provided.

The administration believes any reauthorization of the TAA program should reflect the following priorities: (1) Workers must have increased choice to combine employment with training and "earn while they learn;" (2) Training options should be flexible and easy to access; (3) Services should be available prior to layoff, in order to reduce the length of time workers are unemployed; and (4) Integration with the public workforce investment system should be improved to ensure workers have access to the full range of services available through the One-Stop Career Centers.

#### EMPLOYMENT SERVICES TO UNEMPLOYMENT INSURANCE CLAIMANTS

*Question.* The public Employment Service serves Unemployment Insurance claimants. Employers pay for the administration of Employment Service in part because they assume that workers receiving UI will seek new jobs. From August 2006 through September 2007, about 4.5 million individuals received services under both the unemployment insurance and employment service.

What are your plans for serving these UI claimants when there is no Employment Service under your 2009 budget proposal?

Answer. Under the fiscal year 2009 budget proposal, Unemployment Insurance (UI) claimants would receive employment services through the Workforce Investment Act (WIA) One-Stop Career Center system. We propose to consolidate the Employment Service and WIA Adult, Dislocated Worker, and Youth funding streams into a single funding stream to be used for Career Advancement Accounts and employment services. It is estimated that 600,000 individuals would receive training and an additional 10.4 million individuals, including UI claimants, would receive other employment services under this approach.

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#### QUESTIONS SUBMITTED BY SENATOR ARLEN SPECTER

##### MENTORING

*Question.* Secretary Chao, the statistics on youth violence are staggering. Philadelphia has the fifth highest homicide rate of all major U.S. cities, and juveniles account for 38.5 percent of all arrests in Philadelphia County. To help address this issue, in fiscal year 2007, I included \$25 million within your Department for grants to school districts to discourage youth in high-crime urban areas from involvement in gangs. In fiscal year 2008, \$50 million was included for persistently dangerous schools. Madame Secretary, I believe mentoring is one of the answers to this Nation's youth violence problem. What more can be done by your Department to address the crime and violence problems facing many of our Nation's youth?

Answer. The Department of Labor will continue to work closely with the Department of Justice and its Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the coordination of resources and activities that address the crime and violence young people face. Specifically, the Department anticipates working closely with OJJDP on its current Solicitation for Grant Applications, which focuses on gang prevention and coordination assistance.

The Department will also continue its efforts to fully integrate mentoring strategies in existing and new projects. This includes the Department's current focus on school districts and the discouragement of youth involvement in gangs. The Department is presently making a concerted effort to ensure that existing apprenticeship, alternative education, and expansion projects incorporate mentoring as a key component in program design and service delivery.

Planned grant solicitations, such as those that focus on persistently dangerous schools, will have a required mentoring component for which extensive technical assistance will be provided. The Department also anticipates an opportunity to prepare and distribute to the public workforce investment system a "Mentoring" Training and Employment Notice that will highlight the importance and positive impact of mentoring that, together with other proven models of success, will foster desired employment outcomes. Lastly, the Department will continue its support and active involvement in the Federal Mentoring Council and its focus on foster youth, continue the involvement of Federal staff in direct mentoring activities, and include mentoring as an expressly allowable activity within the Department's grant solicitations.

#### ELIMINATION OF EMPLOYMENT SERVICE STATE GRANTS

*Question.* The budget proposes to eliminate the \$703.4 million employment service State grant program. Your rationale for this decision is that it is duplicative of Workforce Investment Grants (WIA). The number of people served by the Employment Service is 13 million annually. WIA grants service 900,000. How do you plan to serve the 12 million people who would be receiving services under the Employment Service grants?

*Answer.* The fiscal year 2009 budget proposes to consolidate the Employment Service and the Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth funding streams into a single funding stream to be used for Career Advancement Accounts and employment services. It is estimated that 600,000 individuals would receive training and an additional 10.4 million individuals would receive other employment services under this approach.

Our workforce system reform proposals will allow us to significantly increase the number of people trained. Therefore, many participants who would have been previously constrained to employment services due to the limited availability of training will be able to continue their professional development and acquire the skills and abilities sought by employers. Additionally, the labor exchange services traditionally provided by the employment service, such as resume posting and job search assistance, have largely been privatized and job seekers now have free access to Internet job boards that allow them to search for jobs and often post their resumes. While we believe there is an important role for the workforce system to play in providing employment services, these services should be provided exclusively through the One-Stop Career Centers.

#### EMPLOYMENT AND TRAINING SERVICES IN PENNSYLVANIA

*Question.* Pennsylvania State officials claim that the Employment Service and the Workforce Investment Act programs are not duplicative and that eliminating these funds will cut staff and resources that make up at least half of the one-stop system in Pennsylvania. Officials also claim that almost no training will occur, that critical career counseling will be unavailable, and efforts to help veterans with specialized veterans counselors in the Employment Service will be hurt. What is your response to these claims Madame Secretary?

*Answer.* The fiscal year 2009 budget proposes to consolidate the Employment Service and the Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth funding streams into a single funding stream to be used for Career Advancement Accounts and employment services. In addition to eliminating the duplication between the Employment Service and WIA One-Stop delivery system that still exists in a number of States, it would replace the current siloed system of separate training programs, reduce administrative and overhead costs, and, most importantly, significantly increase the number of individuals who receive job training.

We disagree with the statement by Pennsylvania officials that almost no training would occur. Our proposed reforms to the public workforce investment system will ensure that 600,000 individuals receive training nationally at the requested funding level for fiscal year 2009, three times the current number. An additional 10.4 million individuals will receive other employment services, such as career counseling. Current law provisions relating to services to veterans will continue to apply, except that those services will be provided through the VETS-funded and WIA-funded services offered in the One-Stop Career Centers.

#### OFFICE OF JOB CORPS

*Question.* The budget proposes to cut the Job Corps program by \$45.8 million. The cut would result in 4,097 fewer student training slots than in 2008, a reduction of 9.2 percent. Do you plan to close any of the existing 123 Job Corps centers or to operate them below capacity?

Answer. Job Corps does not intend to close any of the existing 123 centers. At the President's fiscal year 2009 budget level Job Corps will be able to support 40,394 student slots.

*Question.* If Congress were to provide funding to fully utilize the capacity of Job Corps centers, how would you improve recruitment aimed at a segment of the 1 million youth who drop out of high school each year?

Answer. Job Corps will continue its outreach and recruitment efforts through our national campaign, consolidated outreach and recruitment plan and continued collaboration with high school counselors and local school districts. Job Corps is also placing greater emphasis on expanding the use of technology to promote the program such as the implementation of a National Job Corps recruitment website including an online application, as well as the using You Tube and other Web based portals for program promotion campaigns.

*Question.* Each year 1.2 million youth drop out of high school. We need to do all we can to find new programs and expand existing program, such as Job Corps to address this problem. Your budget would result in a substantial reduction in Job Corps capacity. Our Nation's dropout statistics disprove your assertion before the House that there is insufficient demand or need for the program. Why do you continue to propose reducing Job Corps' capacity?

Answer. Maintaining enrollment levels is always a top priority for the Office of Job Corps. The Department is not reducing capacity, rather we are no longer allocating funding for training slots which do not have participants. In doing so, we maintain the funding for student activities in those training slots that do have participants and more closely align with the consistent level of on-board strength in the program.

JOB CORPS OBS DATA PY 2003–2007 YTD <sup>1</sup>

|                                 | Program year |        |        |        | Current OBS |
|---------------------------------|--------------|--------|--------|--------|-------------|
|                                 | 2003         | 2004   | 2005   | 2006   |             |
| Average on board strength ..... | 43,178       | 42,441 | 40,760 | 40,512 | 40,569      |

<sup>1</sup> Program Year (July 1–June 30).

*Question.* Historically, the Department of Labor has always been able to implement national plans that boosts Job Corps enrollment. Two years ago we requested that you submit a national plan to the subcommittee. To date, no such plan has been received. When can we expect to receive this plan?

Answer. Job Corps submitted the plan to Congress on May 20, 2008. This reflects the consistent message that Job Corps has provided to Congress over the past 2 years through numerous means to include formal hearings and questions from the committees. This message communicates a comprehensive enrollment plan which includes a consolidated outreach and recruitment strategy implemented in 2006, the Speakers, Tutors Achievement and Success (STARS) program and Career Success Standards in 2007 as well as the Youth Ambassador Program and a pre-enrollment drug test pilot. This comprehensive plan is designed to not only boost enrollment but improve student commitment and retention.

#### OSHA PENALTIES

*Question.* A recent report by the Senate Health, Education, Labor and Pensions Committee showed that the median final OSHA penalty in cases where workers are killed is only \$3,675. Many companies treat such low penalties as just the cost of doing business. Would you agree that corporate accountability is enhanced when OSHA imposes meaningful penalties for serious safety and health violations?

Answer. OSHA agrees that employer accountability is enhanced when meaningful penalties are imposed for serious safety and health violations. However, OSHA does not agree with the HELP Committee's conclusion that the median penalty is the most appropriate measurement of penalties. Using the same data provided to the HELP Committee, and using only closed fatality investigations, which by definition are those investigations where citations have been issued and final payment made, the average penalty per fatality investigation is actually \$6,035. More importantly, it should be noted that 62 percent of OSHA fatality investigations between 2004 and 2007 were conducted at companies with fewer than 25 employees, where penalties must statutorily be adjusted based on the employer's size. In fiscal year 2007, OSHA's significant enforcement actions included more than 100 inspections that each resulted in a total proposed monetary penalty of over \$100,000.

When proposing penalties for violations, the Occupational Safety and Health (OSH) Act requires the agency to take into consideration: (1) the gravity of the alleged violation, (2) the size of the employer's business, (3) the good faith of the employer, and (4) the employer's history of previous violations. Proposed penalties are calculated for each violation, with the initial statutory penalties adjusted based on these statutory factors. The act does not provide for enhanced civil penalty amounts for an employee fatality, except to the extent the statutory factors address the factors contributing to the accident. Moreover, even where violations are found in fatality investigations, those violations may not have contributed to the fatality.

#### CRIMINAL PROSECUTIONS

*Question.* There is essentially no criminal enforcement of our Nation's safety and health laws. In the past 5 years, there have been only 10 prosecutions under the Occupational Safety and Health Act and only 68 cases in the entire 38-year history of the OSHA. What role do you think criminal prosecutions should play in enforcing the law? Do you think 10 prosecutions in 5 years or 68 cases in almost 40 years is enough to have a deterrent effect on employers who don't take their workers' safety and health seriously?

*Answer.* OSHA believes that criminal prosecutions are a vital enforcement tool and provide a powerful deterrent effect for employers who do not take their workers' safety and health seriously and show indifference to compliance with workplace safety and health regulations.

Since the passage of the OSH Act in 1970, OSHA has referred 210 cases to the Department of Justice for consideration of criminal prosecution. This administration has referred 65 OSHA cases to the Department of Justice since 2001—31 percent of all criminal referrals made by OSHA and more than any other administration. The Department of Justice's decisions on whether to prosecute these cases reflect its own further evaluations of the evidence and other appropriate issues.

The primary criminal provision in the Occupational Safety and Health Act is section 17(e), which makes it a misdemeanor for an employer to willfully violate a standard that causes the death of any employee. It is the Department of Labor's policy to evaluate all willful OSHA violations that contribute to workplace fatalities for potential referral to the Department of Justice for prosecution. The Department's Office of the Solicitor has issued specific instructions to its attorneys to evaluate all such cases for criminal referral.

#### MINE SAFETY AND HEALTH ADMINISTRATION

*Question.* Report by the U.S. Department of Labor, Office of Inspector General, Office of Audit: On March 31, 2008, the OIG issued their report regarding MSHA's roof control plan approval process for the Crandall Canyon Mine, which concluded that "MSHA was negligent in carrying out its responsibility to protect the safety of miners." Specifically:

- MSHA could not show that it made the right decision in approving the [roof control] plan or that the process was free from undue influence by the mine operator.
- MSHA did not have a rigorous, transparent review and approval process for roof control plans consisting of explicit criteria and plan evaluation factors, appropriate documentation, and active oversight and supervision by Headquarters and District 9 management.
- MSHA did not ensure that inspections assessed compliance with, and the effectiveness of, approved plans in continuing to protect miners.
- Finally, requirements related to surface rescue operations and non-rescue activities need to be clarified.

*Answer.* That while the report "points to several shortcomings in MSHA's documentation . . . and identified missed opportunities to proactively enhance safety protections," it "does not provide evidence that MSHA negligently breached its duty to protect miners".

*Question.* Madame Secretary, the report found serious deficiencies in the review and approval of the Crandall mine plan—can you assure me that MSHA is taking all steps necessary to make sure that no other unsafe mining plans have been approved by this deficient process? Please provide the subcommittee a list of the safeguards that you have implemented regarding the approval of mine plans.

*Answer.* In response to improving the roof control plan approval process, MSHA has conducted specialized training and has taken specific actions, as described below.

- An evaluation was made of all underground coal mines in the United States to identify mines that may have a "bump" or "burst" potential. This initiative

began in late August 2007 and was completed in December 2007. Seventeen mines were identified. Each one of these mines has been visited by MSHA's Technical Support roof control experts and reports have been submitted to Coal Mine Safety and Health (CMS&H). MSHA will revise the roof control plans accordingly, as well as requesting for Technical Support to review select plans at mines with bump potential.

- MSHA roof control supervisors and specialists received additional training on various computer modeling software that can be used to evaluate complex and non-typical roof control plan proposals.
- A Program Information Bulletin (PIB) was recently issued by MSHA providing guidance on the proper use of the National Institute for Occupational Safety and Health's (NIOSH) Analysis of Retreat Mining Pillar Stability (ARMPS) program. The PIB alerts the mining community about the availability of an updated version of the program.
- A list of Best Practices addressing "Ground Control for Deep Cover Coal Mines" was developed. The Best Practices, which covered topics such as geology, pillar design, multiple seam mining, and retreat mining, were posted on MSHA's website, [www.msha.gov](http://www.msha.gov).
- MSHA and the Bureau of Land Management developed a Memorandum of Understanding to facilitate communication and information sharing about geological conditions or mining practices that impact the health and safety of miners.
- MSHA and NIOSH technical experts in roof control are working together to develop safer retreat mining guidelines. (see addendum below on MSHA/NIOSH Cooperation on Retreat Mining)
- A Procedure Instructional Letter has been issued that provides uniform guidance to CMS&H Districts on which roof control plans are to be sent to MSHA's Technical Support for further review.

In addition, MSHA developed the following procedures, which were sent to the District Managers on June 6, 2008, with a memorandum from the Administrator for CMS&H describing each procedure and its intended use:

New procedures:

- Roof Control Plan Approval Process*.—Incorporates the specific steps involved in the plan approval review process, and identifies the responsible parties for each step. Responsible parties include the roof control specialist and supervisor, mine inspector and supervisor, Assistant District Manager for technical programs, Assistant District Manager for enforcement, and the District Manager. Each of the MSHA personnel reviewing the plan must initial approval/concurrence, and any identified deficiencies must be addressed.
- Roof Control Plan Review Form Checklist*.—Ensures that review items are included in the plan, such as: detailed accident and injury data, violation history, requirements of Title 30 CFR sections 75.204, 75.215, 75.221, and 75.222, software applications related to development, and/or retreat stability factors.
- General Safety Precautions Checklist*.—Addresses Automated Temporary Roof Support systems, removal of loose material, installation of timbers, adverse roof conditions, temporary supports, continuous mining machine breakdown in unsupported area, remote control operation, and distance for first coal mined out of crosscuts. A "breakdown in an unsupported area" occurs when a continuous miner begins mining, advances into the coal seam and breaks down. There is no roof support in this area thus is considered an unsupported area. Mining machines are now equipped with a remote control feature that allows the miner to remotely operate the machine from a safe distance. This document will supplement the Roof Control Plan where applicable.
- Retreat Mining Precautions Checklist*.—Addresses intersection supplemental support, marking pillar cut locations, certified person on working section, equipment operator positioning, training, drilled test holes, and pillar extraction sequence. A certified person is someone who has received additional training and received a certification by the State in which they are working. The concept in this case would be that a certified person would be better trained to determine the adequacy of the roof and make a determination if supplemental support would be needed. This document will supplement the Roof Control Plan where applicable.
- Mobile Roof Support Checklist*.—Addresses safety items directly related to the use of Mobile Roof Support (MRS) units during retreat mining. Some of the items addressed are training, operator positioning, manual and remote operation, procedural limits for lowering and setting MRS, pressure gauges and lights, and breakaway cable hangers. This document will supplement the Roof Control Plan where applicable.



- Deep Cut Safety Precaution Checklist.*—Specific to extended cuts of up to 40 feet in depth. Some of the precautions include place changing, operator positioning, time allotment for unsupported cut, reflective markers on second full row of roof bolts, and conspicuous marking on the continuous miner to indicate depth of cut. This document will supplement the Roof Control Plan where applicable.
- A memorandum has been sent to the District Managers from the Administrator for CMS&H stating that all complex and non-typical roof control plans proposed by mine operators shall contain an assessment of the basis on which the operator has determined the plan is appropriate and suitable to the mining conditions. Data and engineering evaluations shall be included with the assessment. MSHA shall not approve the proposed plan until the operator has provided the data and evaluation supporting the proposal and a confirming evaluation(s) have been completed. On June 3, 2008, a letter was sent from the Administrator to all underground coal mine operators of MSHA's intentions pertaining to complex and non-typical roof control plans.

#### ADDENDUM—MSHA/NIOSH COOPERATION ON RETREAT MINING

NIOSH and MSHA Technical Support are working together to improve safety for miners working in retreat mining operations. In response to language in its fiscal year 2008 budget allocation, NIOSH is conducting, in collaboration with the University of Utah and West Virginia University, a major study of the recovery of coal pillars through retreat room and pillar mining practices in underground coal mines. The study is focusing on mines operating at depths greater than 1,500 feet, but it will address issues that are important to all retreat mining operations. This report will be delivered by December 31, 2009, and will include:

- A detailed description of the retreat mining segment of the industry, including the geologic conditions encountered and the mining practices employed;
- Suggested guidelines for maintaining global stability during retreat mining through proper design of production and barrier pillars. The appropriate use of ARMPS, additional computer-modeling software known as LAMODEL, and other pillar design tools will be covered in detail, as well as specific designs to minimize the risk of bumps;
- Suggested best practices and procedures to ensure local stability during retreat mining, including cut sequence, roof support, and the application of seismic monitoring, and;
- Remaining research needed to develop improved technologies to protect miners during deep cover retreat mining.

MSHA and NIOSH have established a Working Group, consisting of ground control experts from both agencies, to review progress on the NIOSH project and facilitate transfer of information on retreat mining. Personnel from MSHA in Technical Support's Pittsburgh Safety and Health Technology Center's Roof Control Division (RCD) will participate in the MSHA/NIOSH Working Group on retreat mining. RCD personnel will review progress on the NIOSH project and facilitate transfer of information on retreat mining. Based on the findings of the NIOSH project, the Working Group will develop recommendations for establishing methods, requirements, and parameters for technical analyses of retreat mining plans.

Although a project of this scope requires 2 years for completion, RCD's involvement will assure that significant interim results and conclusions of immediate benefit to miner safety are made available to MSHA enforcement personnel and the mining industry as quickly as possible.

Also, RCD, in collaboration with NIOSH, previously developed a pillar recovery risk factor checklist which was published in a December 2005 technical paper. The checklist can be used by MSHA Districts and the mining industry to identify potential problems for specific retreat mining plans. The risk factors listed on the checklist include: production pillar design, barrier pillar design, final pillar stump design, mobile roof supports, supplemental roof support, geologic hazards, equipment operator locations, intersection spans, multiple seam interaction, depth of cover, age of mine workings, and type of coal haulage system.

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#### QUESTIONS SUBMITTED BY SENATOR LARRY E. CRAIG

##### LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

*Question.* Until last year the Office of Labor-Management Standards (OLMS) has received steady increases in funding from this committee. I am supportive of the mission of OLMS to ensure that union funds are being handled in a responsible

way. What results can you cite that would support your fiscal year 2009 request to increase funding for OLMS?

Answer. OLMS has responsibility for enforcement of the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959. After years of inadequate funding to carry out this mission effectively, we have requested resources to re-establish an effective program to ensure union financial integrity and compliance with the LMRDA.

OLMS' union audit program verifies compliance with the law, investigates potential violations and allows OLMS to provide compliance assistance to help unions meet statutory requirements. The audit program had substantially waned since the mid-1980s because of the steady erosion of resources. For example, in 2000, OLMS was able to perform only 204 audits for out of well over 20,000 unions, which was the equivalent of a union being audited once every 133 years. With gradual funding increases for the audit program until fiscal year 2008, the number of audits rose from 238 in 2001 to 775 in 2007—an increase of 226 percent.

The additional resources also have supported investigations into criminal activity. During fiscal year 2007, OLMS secured 100 indictments and 118 convictions against union officials and related parties for crimes, such as fraud and embezzlement. Since 2001, OLMS investigations have yielded a total of 842 indictments with 802 convictions and returned more than \$88,000,000 in restitution to rank-and-file union members. In cases of organized crime and labor racketeering, OLMS has referred cases to the Office of Inspector General (OIG) and has worked cooperatively with the OIG on a number of successful investigations, some of which are described in the Inspector General's semi-annual report.

It is clear that providing OLMS with appropriate resources yields results for rank-and-file union members. The program results from fiscal year 1998 to fiscal year 2007 are set forth below.

|                                       | Fiscal year |       |      |      |      |       |      |      |      |      |
|---------------------------------------|-------------|-------|------|------|------|-------|------|------|------|------|
|                                       | 1998        | 1999  | 2000 | 2001 | 2002 | 2003  | 2004 | 2005 | 2006 | 2007 |
| Actual FTE usage .....                | 289         | 287   | 274  | 290  | 260  | 262   | 290  | 314  | 327  | 331  |
| Compliance audits .....               | 302         | 289   | 204  | 238  | 277  | 255   | 532  | 612  | 736  | 775  |
| Criminal cases processed .....        | 367         | 386   | 464  | 371  | 410  | 317   | 303  | 332  | 340  | 406  |
| Indictments .....                     | 143         | 119   | 204  | 99   | 166  | 131   | 110  | 115  | 121  | 100  |
| Convictions .....                     | 130         | 131   | 191  | 102  | 89   | 152   | 111  | 97   | 133  | 118  |
| Compliance audits .....               | 302         | 289   | 204  | 238  | 277  | 255   | 532  | 612  | 737  | 775  |
| International compliance audits ..... | .....       | ..... | 4    | 1    | 2    | ..... | 1    | 7    | 5    | 7    |

A recent example of OLMS's work can be seen in a case starting in 2006 when a compliance audit by the OLMS Detroit District Office of Steelworkers Local 1358 revealed that, during the period from November 1999 through July 2006, the Secretary-Treasurer had embezzled a total of \$274,262.38 from Local 1358 by cashing checks to himself. He forged the signature of another officer to further his scheme, created false union records, and destroyed union records to conceal his embezzlement. In addition, he caused the union to file false LM reports by omitting the embezzled amounts when he prepared the reports. On July 11, 2007, he pled guilty to one count of embezzling union funds. He made restitution of \$128,438.46 prior to the discovery of the embezzlement, resulting in a net loss to the local of \$145,823.92. On November 14, 2007, he was sentenced to 24 months in prison and 2 years of supervised release. He was ordered to pay restitution of \$145,823.92 and a special assessment of \$100. He was also ordered to participate in the Bureau of Prisons Inmate Financial Responsibility Program.

Another example of OLMS's compliance audit program concerns the 2007 audit of the Federated Independent Texas Union Local 900 in Fort Worth. Based on issues raised during this audit, OLMS opened a criminal investigation into a potential embezzlement. Subpoenaed bank records revealed that 63 union checks, endorsed by the then-treasurer, had been deposited into her personal bank accounts. The treasurer also made withdrawals of union funds amounting to \$35,850 for personal use. The treasurer pled guilty before trial to one count of embezzlement of union funds totaling \$164,268.

Since 2001, the Department has also worked to improve the enforcement of the LMRDA by updating the 40-year-old financial disclosure forms required by the law. With the first significant update of the annual union financial disclosure report used by the Nation's largest unions (Form LM-2) in over 40 years, the Department increased the usefulness of the Form LM-2 and empowered rank-and-file union members to easily access clear and concise information on how their dues money is spent

and on the financial condition of their unions. Although the reforms were challenged in court, they were upheld in a significant U.S. District Court decision and affirmed in large part by the U.S. Court of Appeals for the D.C. Circuit.

OLMS has also updated Form LM-30, the report filed by union officers and employees to disclose possible conflicts of interest between their personal financial interests and their duty to the union and its members, and has stepped up compliance with Form LM-10 Employer Report filing requirements.

In order to provide rank and file union members with better accountability and transparency, OLMS has established a public disclosure Web site at [www.unionreports.gov](http://www.unionreports.gov). This Web site contains union annual financial disclosure reports and reports required to be filed by employers, labor relations consultants, and union officers and employees, as well as copies of collective bargaining agreements.

The OLMS 2007 Annual Report can be found at the following website: [www.dol.gov/esa/olms/regs/compliance/highlights\\_07.pdf](http://www.dol.gov/esa/olms/regs/compliance/highlights_07.pdf).

#### SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

*Question.* Your fiscal year 2009 request for the Senior Community Service Employment Program (SCSEP) is the same as the amount appropriated in fiscal year 2008. In your testimony you cited the ineffective rating that this program received by the Program Assessment Rating Tool (PART). What steps are being taken to improve the efficiency of SCSEP?

*Answer.* Although the 2003 PART evaluation gave the Senior Community Service Employment Program (SCSEP) an ineffective rating, the Department has actively addressed deficiencies identified by that evaluation through several administrative actions and the 2006 reauthorization of the Older Americans Act. The deficiencies included inadequate competition in the grants process, lack of data on program performance and impact, and duplication of other Federal programs. Program improvements since the 2003 evaluation include:

- Development of a comprehensive on-line data collection and performance management system (known as SPARQ).
- Completion of three competitions, including one for national grantees (which account for 78 percent of all SCSEP participant positions); one for grants to create employment opportunities with private businesses; and one for pilot and demonstration grants.
- Provision of extensive technical assistance and training for all grantees on programmatic, fiscal, and performance issues.
- Improved grantee planning instructions on collaboration and coordination with other entities to minimize duplication and to allow SCSEP to serve those with the more significant barriers to employment.

#### SUBCOMMITTEE RECESS

Senator HARKIN. Well, thank you, Madam Secretary. You are very generous with your time. I appreciate it very much.

The subcommittee will stand in recess.

[Whereupon, at 11:38 a.m., Wednesday, May 7, the subcommittee was recessed, to reconvene subject to the call of the Chair.]